Nov. 18. 1874. Filed

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~349~~. 72

THE GERMANIA INSURANCE COMPANY, THE NIAGARA INSURANCE COMPANY, THE HANOVER INSURANCE COMPANY, THE REPUBLIC INSURANCE COMPANY, APPELLANTS,

vs.

THE STEAMBOAT LADY PIKE, HER BOATS, ETC., AND THE BARGE SALMON, (CHRISTOPHER G. PEARCE, WILLIAM W. HANLEY, AND WILLIAM KNIGHT, CLAIMANTS OF SAID STEAMBOAT, AND THE WESTERN UNION RAILWAY COMPANY, CLAIMANT OF SAID BARGE.)

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF WISCONSIN.

FILED DECEMBER 7, 1872.

Oct. D, 1874

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1 Circuit court of the United States of America for the eastern district of Wisconsin.

UNITED STATES OF AMERICA,
Eastern District of Wisconsin, ss:

At a special term of the circuit court of the United States of America for the eastern district of Wisconsin, begun and held according to law at the city of Milwaukee, in said eastern district of Wisconsin, on the first Monday (being the third day) of April, A. D. 1871.

Present and presiding the honorable Thomas Drummond, circuit judge, and the honorable Andrew C. Miller, district judge, Charles S. Hamilton, marshal, Edward C. Kurtz, clerk.

Among other the following proceedings were had, to wit:

THE GERMANIA INSURANCE COMPANY, THE Niagara Insurance Company, The Hanover Insurance Company, & The Republic Insurance Company
vs.
THE STEAMBOAT LADY PIKE, HER BOATS, &C., and the barge Salmon, Christopher G. Pearce, William W. Hanley, & William Knight, claimants of said steamboat, & the Western Union Railway Company, claimant of said barge.
} Appeal in admiralty.

Be it remembered that heretofore, to wit, on the twenty-eighth day of August, A. D. 1869, a certified copy of record in said cause in the district court of the United States for the district of Wisconsin, was received from the clerk of said court, and filed in the clerk's office of the circuit court of the United States for the district of Wisconsin, as follows, to wit:

District court record.

UNITED STATES OF AMERICA,
District of Wisconsin, ss:

At a stated term of the district court of the United States of America for the district of Wisconsin, begun and held according to law
2 at the city of Milwaukee, in said district of Wisconsin, on the second Monday (being the twelfth day) of April, A. D. 1859; present, the honorable Andrew G. Miller, judge of said court, presiding:

THE GERMANIA INSURANCE COMPANY, THE Niagara Insurance Company, The Hanover Insurance Company, & The Republic Insurance Company
vs.
THE STEAMBOAT LADY PIKE, HER BOATS, tackle, apparel, her boilers, engines, machinery and furniture, and the barge Salmon.
} In admiralty.

Be it remembered that heretofore, to wit, on the ninth day of October, A. D. 1866, came the above-named libellants, by their proctor, E. Mariner, esq'r, and presented to the court their libel against the steamboat Lady Pike, her boilers, engines, machinery, boats, tackle, and furniture, and the barge Salmon, as follows:

Libel—In admiralty.

To the Hon. Andrew G. Miller, judge of the district court of the United States for the district of Wisconsin.

The Germania Insurance Company, The Niagara Insurance Company, The Hanover Insurance Company, and The Republic Insurance Company, all of the city of New York, corporations organized and doing business under the laws of the State of New York, bring this their libel against the steamboat Lady Pike, her engines, boilers, machinery, tackle, apparel. & furniture, and against the barge Salmon, now lying at the port of La Crosse, and against all persons lawfully intervening for their interest therein, in a cause or damage, civil and maritime. And thereupon these libellants do allege and propound as follows:

First. That said steamboat Lady Pike and said barge Salmon, now lying at the port of La Crosse, in this district, are each of them vessels of more than twenty tons burthen, and, at the time when the cause of action hereafter set forth, were enrolled and licensed for the coast-
3 ing trade, were each of them engaged in the business of commerce and navigation between ports and places in different States of the United States, upon the waters of the Mississippi River navigable from the sea, &c., &c.

Second. That each one of said libellants is a corporation organized and doing business under the laws of the State of New York.

Third. That on the 24th day of April, 1866, one William H. Anderson was owner of 6,753$\frac{25}{100}$ bushels of No. one spring-wheat at the port of Shakopee, a port or place on the Minnesota River, in the State of Minnesota, and upon that day procured one T. J. Duffy to enter into a contract with one A. C. Mountford, then master of said steamer and barge Salmon, in consideration of a certain freight to be paid therefor, to convey & transport said wheat upon said steamer and said barge from said port of Shakopee, in the State of Minnesota, to the port of Savannah, upon the Mississippi River, in the State of Illinois, to be transported thence to the city of Chicago, in the State of Illinois.

Fourth. That thereupon said William H. Anderson delivered to said A. C. Mountford, then being such master as aforesaid, said 6,753$\frac{25}{100}$ bushels of wheat, to be by him so transported as aforesaid from said port of Shakopee to said port of Savannah. That said Mountford, as such master, received the said wheat and put the same upon board his said steamer Lady Pike and said barge Salmon, which was then being used in connection with said steamer Lady Pike, and as part of her equipment, and executed and delivered to said T. J. Duffy a bill of lading, in and by which he acknowledged the shipment of said wheat upon said steamer & barge Salmon, whereof he was master, in good order and well conditioned, by said J. T. Duffy, for the account and at risk of whom it might concern, at said port of Shakopee, consigned to Sherman, Hall & Pope, Chicago, Ill., for account of said Duffy, and then and there undertook and promised to deliver said wheat without delay and in like good order, with the privilege of lighting, towing, and reshipping, unavoidable dangers of the river and fire only excepted, to said consignees at the northwestern elevator at Chicago aforesaid,
4 without unnecessary delay, he or they paying freight therefor at the rate of twenty cents per bushel.

That afterward, and upon said 24th day of April aforesaid, the said steamer Lady Pike and said barge Salmon, in tow of said steamer, having said 6,753.25 bushels of wheat laden on board, left the port of Shackopee aforesaid, and proceeded on their voyage for the port of

Savannah aforesaid, but the said A. C. Moun'ford, master as aforesaid, not regarding h's duty in that respect, nor his promise and undertaking to carry and deliver said wheat aforesaid, did not so convey and deliver the same, although no dangers of the river or fire prevented him from so doing, but, on the contrary, so negligently and carelessly conducted himself in respect to said wheat, that through the mere carelessness and negligence and improper conduct of the said A. C. Mountford, and his mariners & servants, said wheat became and was wholly lost, and said barge with said wheat on board sunk in the Mississippi River,

That after said William H. Anderson had so as aforesaid caused said grain to be shipped on board said steamer and barge as aforesaid, he applied to these libellants, who were doing business as insurers under an agreement to divide their risks and premiums, and to make assurance under the name of the underwriters' agency, to insure said grain during such voyage, and thereupon the said libellants did each for itself in the proportion of one-fourth to each, but in one policy, executed by all the libellants, insure said William H. Anderson in the sum of eighty-one hundred dollars upon said 6,753 bushels of wheat on board said barge Salmon, at and from said port of Shakopee to said port of Savannah, and executed and delivered to him, the said William H. Anderson, a proper contract therefor.

That, by reason of such insurance and such loss aforesaid, the said libellants were obliged to pay and did pay to said William H. Anderson the said sum of eighty-one hundred dollars so insured upon said 6,753 bushels of wheat, which payment was made on the third day of July, 1866, and thereupon said William H. Anderson executed and delivered unto these libellants an agreement subrogating these libellants to all and every claim of damage which the said Anderson had against the said respondent.

That the libellants have sustained damage by reason of the premises in the sum of eighty-one hundred dollars, besides interest thereon from the 6th day of July, 1866.

That all and singular the premises are true. Wherefore these libellants pray that process in due form of law may issue against said steamboat Lady Pike, her engines, boiler, boats, tackle, apparel, & furniture, and against said barge Salmon, and that this honorable court will pronounce for their aforesaid demand with costs and for such further and other relief and redress as to right and justice may appertain and as this court is competent to give.

E. MARINER,
Proctor for Libellants.

And same day filed their stipulation, with Levi H. Kellogg as surety, in the sum of $250.00, for the payment of costs, as follows:

Libellant's stipulation.

District court of the United States for the district of Wisconsin.

Whereas a libel was filed in this court on the sixth day of October, in the year of our Lord one thousand eight hundred and sixty-six, by The Germania Insurance Company, The Niagara Insurance Company, The Hanover Insurance Company, & The Republic Insurance Company, against the steamboat the Lady Pike & the barge Salmon, for the reasons and causes in the said libel mentioned, and praying that process

in due form of law may issue against said steamboat & barge, and the parties hereto hereby consenting and agreeing that, in case of default or contumacy on the part of the libellants or their sureties, execution may issue against their goods, chattels, and lands for the sum of two hundred and fifty dollars:

Now, therefore, it is hereby stipulated and agreed, for the benefit of whom it may concern, that the stipulator undersigned shall be, and he is, bound in the sum of two hundred and fifty dollars, conditioned that the libellants above named shall abide by the final decree entered in this cause, and shall pay all such costs as shall be awarded against them by this court, or, in case of appeal, by the appellate court.

6

LEVI H. KELLOGG.

Taken and acknowledged this sixth day of Oct'r, 1866, before me.
FRANCIS BLOODGOOD,
U. S. Commissioner.

District of Wisconsin, ss: Levi H. Kellogg, of said district, party to the above stipulation, being duly sworn, doth depose and say that he is worth the sum of five hundred dollars over and above all his just debts and liabilities.

LEVI H. KELLOGG.

Subscribed & sworn to this 6th day of October, 1866, before me.
FRANCIS BLOODGOOD,
U. S. Commissioner.

Order for process & advert't.

Whereupon it is ordered by the court that a monition issue to the marshal, returnable on the first day of November next, at eleven o'clock in the forenoon of that day, and that this court will on that day proceed to the trial and hearing thereof.

And it is further ordered that notice be given by advertisement in the Daily Milwaukee News, a daily paper printed in the city of Milwaukee, and also by notices posted in the most public manner at and near the place of trial for at least six days.

Whereupon a monition issued, as follows:

Monition.

7 [50c.-stamp, cancelled.]

DISTRICT OF WISCONSIN, *ss:*

[L. S.] The President of the United States of America to the marshal of the district of Wisconsin, greeting:

Whereas a libel hath been filed in the district court of the United States for the district of Wisconsin, on the ninth day of October, in the year of our Lord one thousand eight hundred and sixty-six, by The Germania Insurance Company, The Niagara Insurance Company, The Hanover Insurance Company, & The Republic Insurance Company, against the steamboat Lady Pike, her boilers, engines, machinery, boats, tackle, apparel, and furniture, and the barge Salmon, for the rea-

sons and causes in the said libel mentioned, and praying the usual process and monition of the said court in that behalf to be made, and that all persons interested in the said steamboat or vessel, her tackle, barge, &c., may be cited, in general and special, to answer the premises, and all proceedings being had that the said steamboat or vessel, her tackle, barge, &c., may, for the causes in the said libel mentioned, be condemned and sold to pay the demands of the libellants.

You are therefore hereby commanded to attach the said steamboat or vessel, her tackle, barge, &c., and to detain the same in your custody until the further order of the court respecting the same, and to give due notice to all persons claiming the same, or knowing or having anything to say why the same should *on*t be condemned and sold pursuant to the prayer of the said libel, that they be and appear before the said court, to be held in and for the district of Wisconsin on the first day of November next, at eleven o'clock in the forenoon of the same day, if the same shall be a day of jurisdiction, otherwise on the next day of jurisdiction thereafter, then and there to interpose a claim for the same, and to make their allegations in that behalf. And what you shall have done in the premises do you then and there make return thereof, together with this writ.

Witness the honorable Andrew G. Miller, judge of the district court of the United States for the district of Wisconsin, at the city of Milwaukee, in the said district, this ninth day of October, in the year of our Lord one thousand eight hundred and sixty-six, and of our Independence the ninety-first.

J. M. MILLER, *Clerk.*

E. MARINER, *Proctor for Libellants.*

8 *Return.*

In obedience to the within precept I have, this 18th day of October, A. D. 1866, attached the steamboat Lady Pike, her boilers, engines, machinery, boats, tackle, apparel, and furniture, at La Crosse, and have given due notice, by posting notices to all persons claiming the same, that this court will, on the first day of November next, at eleven o'clock in the forenoon of that day, should the same be a day of jurisdiction, otherwise on the first day of jurisdiction thereafter, proceed to the trial and condemnation thereof, unless a claim shall be interposed for the same, and they make their allegations in that behalf.

Fees, $116.66.

CASSIUS FAIRCHILD, *Marshal.*
By HOWARD CRAMER, *Deputy.*

Cl't's stipulation.

OCTOBER 27TH, 1866.—This day came Henry Lourey, as claimant of steamboat Lady Pike, her engine, boiler, machinery, &c., and presented his stipulation, with Samuel Marshall as surety, in the sum of ten thousand dollars, (libellant's proctor having agreed to that sum,) conditioned that said claimant shall abide by and answer the decree of this court in this cause.

Whereupon it is ordered by the court that a warrant of restitution be issued to restore said steamboat Lady Pike, her engines, boiler, &c., &c., to said claimant, and warrant of restitution issued as follows:

9 *Warrant of restitution.*

DISTRICT OF WISCONSIN, *ss:*

[L. S.] The President of the United States of America to the marshal of the district of Wisconsin, greeting:

Whereas a libel has been filed in the district court of the United States for the district of Wisconsin, on the ninth day of October, in the year of our Lord one thousand eight hundred and sixty-six, by The Germania Insurance Company, The Niagara Insurance Company, The Hanover Insurance Company, & The Republic Insurance Co., against the steamboat Lady Pike, her engine, boiler, machinery, boats, tackle, apparel, and furniture, and barge Salmon, praying that the same may be condemned as forfeited to the said libellant; and whereas the said steamboat Lady Pike, her engine, &c., has been attached by the process of the said court in pursuance of the prayer of the libel, and is now in your custody in virtue of said process; and whereas also a claim has been interposed and filed in said court by Henry Lourey, and such proceedings have been thereupon had that, by the sentence and decree of said court in this cause, made and pronounced on the twenty-seventh day of October, eighteen hundred and sixty-six, the said steamboat Lady Pike, her boiler, engine, machinery, boats, tackle, apparel, & furniture, was adjudged to belong as claimed, and was ordered to be restored to the said claimant; therefore you, the said marshal, are hereby commanded to release the said steamboat Lady Pike, her engine, boiler, &c., from arrest, and to deliver and return the same unto the said Henry Lourey.

And what you have done in the premises do you make return thereof before the said court of admiralty forthwith, together with this writ.

Witness the honorable Andrew G. Miller, judge of the district court of the United States of America for the district of Wisconsin, at the city of Milwaukee, in said district, this 27th day of October, in the year of our Lord one thousand eight hundred and sixty-six, and of the Independence of these United States the ninety-first.

J. M. MILLER, *Clerk.*

10 *Return.*

In obedience to the within warrant, I have, this 30th day of October, A. D. 1866, released the steamboat Lady Pike, her boilers, engines, machinery, boats, tackle, apparel, and furniture, from arrest, as commanded.

CASSIUS FAIRCHILD, *Marshal.*
By HOWARD CRAMER, *Deputy.*

Time extended to file answer.

DECEMBER 29, 1866.—This day came the claimant, by his proctor, Mr. Lynde, and, on his motion, it is ordered by the court that the time for filing an answer be extended to the first day of February next.

Answer.

FEBRUARY 2, 1867.—This day came C. G. Pearce, William W. Hawley, and William Knight, claimants, by their proctors, Messrs. Finches, Lynde, & Miller, and filed their claim and answer, as follows:

To the honorable Andrew G. Miller, judge of the district court of the United States for the district of Wisconsin. In admiralty.

The answer and claim of Christopher G. Pearce, William W. Hanley, & William Knight, owners of the steamer Lady Pike, intervening for their interest in the said steamer, her engines, boilers, machinery, tackle, apparel, and furniture, and the Western Union Railroad Company, owners of the barge Salmon, and intervening for their interest therein, to the libel filed by The Germania Insurance Company and The Republic Insurance Company, both of New York, alleges as follows:

First. That they admit the facts set out in the first article of the libel.

Second. That as to the facts set out in the second article of said libel they have no knowledge, information, or belief, and no means of knowledge, and they therefore require proof.

Third. That on or about the 21st of April the said steamer Lady Pike, waylaying at Reid's Landing, at the foot of Lake Pepin, with three barges in tow of said boat, belonging to the Western Union
11 Railroad Company, and bound for the Minnesota River; that the captain of said steamboat, A. C. Montfort, then made an arrangement with one T. J. Duffy, by which the said barges were to be loaded with wheat in bulk by him, and be carried therein, the said steamer towing the same from Shakopee to Savannah, and from there the said wheat was to be carried forward to Chicago by said Western Union Railroad Company, all at 20 cents per bushel; that the said steamer with the said barges proceeded to Shackopee, on the Minnesota River, where the said Duffy, or some one acting for him, caused the said three barges to be loaded with wheat in bulk; that claimants do not know how much wheat was placed by the said shippers in the barge Salmon, but suppose the amount alleged in the libel to be correct. They further allege that the said wheat was to be thus transported in bulk in the said barges so loaded by the shipper, and that the consignors received a bill of lading to that effect; that none of said wheat was shipped on said boat, but it was agreed and understood to be taken by said steamboat in the barges in bulk; that the said boat was not prepared for or fit to take wheat on board of it in bulk, as was known to said Duffy and the shipper.

Fourth. In answer to the fifth article of said libel, the claimants allege that the said steamboat and barges left Shackopee in good order, and proceeded on the said trip with all possible care, caution, and skill; that when passing through the piers raised in the Mississippi River, in the upper end of St. Paul's, in the usual way, and while in the usual channel for such passage, the said steamer & said barge was, by a sudden gust of wind, blown to the larboard, so that the said barge Salmon struck the said pier on that side and was sunk thereby; that the said steamboat and barge Salmon were fully and completely manned and equipped, and in all respects river-worthy, and were carefully and skillfully managed at the time of injury, and that the said sinking and consequent loss was an unavoidable danger of the river. The claimants
12 deny that the said sinking was caused by any negligence or carelessness or improper conduct whatever on their part, or on the part of those navigating said boat or barges. The claimants further allege that the said sunken barge and wheat was taken due care of by proper parties until the same was received by the said Duffy, his agents and assigns, and a large part thereof saved, and a still larger part should have been saved by them. They further allege that the

said loss was not caused in any respect by any want of care, skill, or other improper conduct by them or their agents, and they deny that they are liable therefor.

Fifth. The claimants, for further answer to the fourth article of the libel, say that they have no knowledge of the insurance or risk of the libellants, and they therefore require proof thereof. They knew that it was insured to cover such perils, but by whom, how, and for whom, they had and have no knowledge, nor have they any knowledge of the payment of the insurance money by the libellants, and they therefore require proof thereof; nor have the claimants any knowledge of any damage suffered by the libellants, and therefore require proof thereof.

And the claimants pray that the said libel may be dismissed as to them and each of them, and that their said boat and barge and the security given therefor may be released and discharged, and that the claimants may have their reasonable costs decreed to them, and that they have such further and other relief as they may be entitled to.

C. G. PEARCE,
For self & other Owners.

FINCHES, LYNDE & MILLER,
Proctors.

STATE OF OHIO,
Hamilton County, ss:

A. C. Montfort, being duly sworn, says that he was captain of the steamboat Lady Pike at the time named in the within answer, and is knowing to the facts contained therein, and that they are true as therein stated. He further says that none of the claimants and owners of said boat were aboard of her, and they are therefore ignorant of the facts relating to this matter, and for that reason this answer is sworn to by affiant.

A. C. MONTFORT.

13 Subscribed in my presence & sworn to before me this 26th day of January, A. D. 1867.

[L. S.] W. HAYDEN EDWARDS,
Notary Public, Hamilton Co., O.

[5-cent rev. stamp. Canc'd.]

Former stipulation removed and stip'n of W. F. & P. S. Davidson filed.

FEBRUARY 8, 1867.—This day came Mr. Lynde, proctor for claimants, and, on his motion, it is ordered by the court that the stipulation with William F. Davidson and Peyton S. Davidson, dated January 27th, 1867, in the sum of sixteen thousand dollars, herein this day filed, be substituted for and be in lieu of a stipulation of Samuel Marshall, on file in this case, and which is now returned to him. And which first-named stipulation is as follows:

Stipulation.

14 District court of the United States for the district of Wisconsin. In admiralty.

Whereas a libel was filed on the ninth day of October, in the year of our Lord one thousand eight hundred and sixty-six, by The Germania

Insurance Company, The Niagara Insurance Company, The Hanover Insurance Company, and The Republic Insurance Company, against the steamboat Lady Pike, for the reasons and causes in the said libel mentioned. And whereas the said steamboat Lady Pike is in the custody of the marshal under the process issued in pursuance of the prayer of said libel, as appears from said process, now on file in said court:

Appearing personally Ephraim G. Peirce and William Knight, represented by William Hull, their attorney, as the claimants of the said steamboat, and produced for sureties William F. Davidson and Peyton S. Davidson, and the said William F. Davidson and Peyton S. Davidson, submitting themselves to the jurisdiction of the court, bound themselves, their heirs, executors, and administrators in the sum of sixteen thousand dollars unto the said libellants that the said William F. Davidson and Peyton S. Davidson shall abide and answer the decree of the said court in the aforesaid cause, and unless they shall so do they do hereby severally consent that execution shall issue forth against them, their heirs, executors, and administrators, goods and chattels, lands and tenements, wheresoever the same may be found, to the value of the sum above mentioned.

E. G. PIERCE & WILLIAM KNIGHT,
By WILLIAM HULL, *their Att'y.*
W'M F. DAVIDSON.
P. S. DAVIDSON.

Taken and acknowledged this twenty-second day of January, 1867 before me.

CYRUS K. LORD,
U. S. Commissioner for the Dist. of Wisconsin.

DISTRICT OF WISCONSIN, *ss:*

William F. Davidson and Peyton S. Davidson, parties to the above stipulation, being duly sworn, do depose and say, each for himself, that he is worth the sum of sixteen thousand dollars over and above all his just debts and liabilities.

W'M F. DAVIDSON.
P. S. DAVIDSON.

Sworn to this twenty-second day of January, 1867, before me.

CYRUS K. LORD,
U. S. Commissioner for the District of Wisconsin.

15 JULY 5, 1867.—Depositions received from post-office and filed.
MARCH 12, 1869.—Depositions received from post-office and filed.
APRIL 10, 1869.—Depositions received from post-office and filed.
APRIL 14, 1869.—Depositions received from post-office and filed.
JUNE 3, 1869.—Depositions received from post-office and filed.

Hearing.

JUNE 12, 1869.—This day came the parties, by their counsel, and this cause came on to be heard, and being concluded, the court held the same under consideration.

16 LIBELLANTS' TESTIMONY.

District court of the United States, district of Wisconsin.

THE GERMANIA INSURANCE COMPANY ET AL., libellants,
vs.
THE STEAMBOAT LADY PIKE, WILLIAM Knight et al., claimants.

GENTLEMEN: You will please to take notice that the depositions of James Johnson, James Lauderdale, John Haycock, Elliott Haycock, Captain Edwin Bell, Charles A. F. Morris, Charles Etheredge, John Moulton, of St. Paul, Minnesota, William H. Anderson, How, and Bush, of the firm of How & Bush, insurance agents, of Shakopee, Minnesota, will be taken before me at my office, in the city of St. Paul, Minnesota, on the 25th day of February, 1869, at 10 o'clock a. m., at which time & place you will appear and put such interrogatories as you think fit.

Yours, &c.,

H. E. MANN,
U. S. Commissioner for the District of Minnesota.

Messrs. FINCHES, LYNDE & MILLER,
Respondent's Proctors.

We admit service of the within notice Jan. 20, '69.
FINCHES, LYNDE & MILLER,
Atty's for Lady Pike.

District court of the United States for the district of Wisconsin.

THE GERMANIA INSURANCE COMPANY ET ALS., libellants,
vs.
THE STEAMBOAT LADY PIKE, WILLIAM Knight et al., claimants.

DISTRICT OF MINNESOTA, *ss:*

17 Be it remembered that, on the 25th day of February, A. D. 1869, at St. Paul, in said district of Minnesota, pursuant to the foregoing annexed notice, and the admission of service thereon indorsed, and the proceeding heretofore had herein, the parties above named, by their respective proctors and solicitors, appeared before me, a commissioner appointed by the circuit court of the United States for the district of Minnesota to take acknowledgements of bail, affidavits, &c., pursuant to the laws of the United States, the said libellant appearing by Cushman K. Davis, its proctor and solicitor, and the respondent and claimants by W. P. Warren, their proctor & solicitor, and, by the consent of said proctors, proceedings were continued until the 25th inst., at 2 p. m.

FEBRUARY 26th, 1869.—Pursuant to the above continuance, the said parties again appeared by their said proctors and solicitors, and the ollowing proceedin gs were had.

Deposition of Charles Etheredge.

CHARLES ETHEREDGE, a witness produced by libellants, being duly sworn, says:

My name is Charles Etheredge; I reside in St. Paul; am thirty-five years old; I reside more than 100 miles distant from Milwaukee; I am insurance agent, and have been for the past four years; I was one of the agents for The Germania, Hanover, Niagara, and Republic Insurance Companies, under the name of underwriters' agency, during the whole year 1866.

Question. Do you know the firm of How & Balch, of Shakopee, and do you know what their relations were to the above-named insurance companies under the name of the underwriters' agency on the 23d of April, 1866? If yea, go on and state.

(Objected to by respondents and claimants as not calling for the best evidence, & hearsay.)

Answer. I know the firm of How & Balch, and, as far as my knowledge goes, they were agents of the underwriters' agency during the year 1866. This company is composed of the 4 companies named.

18 Question. Do you know the handwriting of the said firm of How & Balch?

Answer. I never have seen either of them write; never have seen either of them use a pen; but I have letters purporting to be from them; I received these letters on matters of business to and fro; I have wrritten to them and received answers.

Question. Look upon a paper now handed you, marked by the commissioner Exhibit A, to your testimony, purporting to be certificate of insurance No. 2 of the above-named companies, under the name of the underwriters' agency, and purporting to be signed by How & Balch, and state whose signature is appended to that certificate.

(Objected to by respondent & claimants because it does not appear that the witness is acquainted sufficiently with their handwriting or signature.)

Answer. I don't know. It bears no similarity to the signatures I have in my possession.

Question. You have stated that Howe & Balch were agents of the above-named companies during the year 1866. State now of what portion of the year 1866 they were such agents, and what was the nature of their agency.

(Objected to by respondent & claimants on the ground that it does not appear that the witness has any knowledge, except from hearsay, touching the matters involved in the question, and not the best evidence.)

Answer. As far as my knowledge extends they were agents during the whole of the year 1866, and as such agents were empowered to transact the ordinary business of local agents, that is, to effect insurances against loss by fire and marine or inland insurauce.

Question. Do you know William H. Anderson?

Answer. I do.

Question. Do you know his handwriting?

19 Answer. I can't say that I do; still, I have seen him make his signature; I don't know as I should recognize it now.

Question. Look upon the paper marked Exhibit B by the commissioner, and state if you know in whose handwriting the same is, and who signed the same.

(Objected to by respondent & claimants on the ground that the witness does not appear to have any adequate knowledge in that behalf.)

Answer. I don't know.

Question. Look upon the paper marked Exhibit C by the commissioner, and state if you know in whose handwriting the same is, and who signed the same.

(Same objection interposed as last above.)

Answer. I don't know the handwriting of the body of the instrument; the signature is that of William H. Anderson; I know it from the change of date from June to July, and the addition of the figure 3, making it read July 3, which I made; the change was made July 3, 1866, at the time of the payment of the loss; I also made it read 1866; the two figures 6 & 6 I placed there myself; I saw him sign it.

Question. Who adjusted and paid this loss?

(Objected to as immaterial by respondent & claimants, & hearsay.)

Answer. I paid the loss; but I don't remember who adjusted it or made the proofs.

Question. In what capacity and for whom were you acting in paying said loss?

(Objected to by respondent & claimants as incompetent, irrelevant, and immaterial for any purpose.)

Answer. Capacity of special agent of the underwriters' agency, composed of the companies spoken of.

Question. To whom did you make payment on such loss, and what was the amount paid?

20 (Objected to by claimant as immaterial and irrelevant.)

Answer. I paid William H. Anderson eight thousand and one hundred dollars on the 3d day of July, 1866, at which time Exhibit C was executed by William H. Anderson.

Question. When did you first see Exhibit A?

(Objected to by claimant as immaterial.)

Answer. I don't know whether I ever saw it before to-day or not.

Question. State whether or not, at the time of the payment aforesaid, the said William H. Anderson held any certificate or policy of insurance covering the loss so paid; and, if yea, from what companies?

(Objected to by respondent & claimants as not the proper or best evidence.)

Answer. I presume that he did, but can't state positively. It is probable certificate A was delivered at the time it was paid; still, I am not sure of it.

Cross-examination by claimants & respondent:

Mr. Wm. H. Anderson lives at Shakopee, Minnesota. I first became acquainted with him in May, 1866, in connection with this loss and claim. I know Balch personally, Howe also. Have known them since 1865. I have had some business with them—not a great deal of correspondence; several letters, however, have passed. I guess there must be less than twelve. I presume we have exchanged a half dozen letters, perhaps more; perhaps a dozen.

CHARLES ETHERIDGE.

Deposition of John Moulton.

JOHN MOULTON, a witness produced by libellant, being duly sworn, says:

My name is John Moulton. I reside in St. Paul. My age is 33 years.

My occupation, clerk. I know that there was such a firm as How & Balch at Shakopee. I reside more than 100 miles from Milwaukee, Wis.

21 Question. Do you know what their relations were to the Germania, Hanover, Niagara, and Republic Insurance Companies, under the name of the underwriters' agency, on the 23d of April, 1866?

A. I do not.

Question. Look upon the paper marked Exhibit C, to the testimony of Charles Etheridge, purporting to be witnessed by you, and state who wrote the words "witness, John Moulton," when they occur in said paper.

Answer. I wrote the words "witness, John Moulton" as witness to the signature of William H. Anderson. It was in the office of Etheredge & Powell, in St. Paul, and I presume on the date July 3, 1866. I have no further recollection in regard to the execution of the instrument.

JOHN MOULTON.

Deposition of Charles A. F. Morris.

CHARLES A. F. MORRIS, a witness produced by the libellants, being duly sworn, says:

My name is Charles A. F. Morris. I reside in St. Paul. My age is 42 years. I reside more than 100 miles from Milwaukee, Wis. I am a civil engineer, contractor, and surveyor.

Question. Look at the map marked as follows, "Exhibit A, attached to the deposition of Charles T. Spencer, in case of Germania Insurance Co. et al. vs. Steamboat Lady Pike & Barge Salomon," and state by whom that map was prepared and what it represents.

Answer. It was prepared by me, and shows the route of the Minnesota & St. Paul Railway, then the "Minnesota Central Railway," across the Mississippi River, between Dakota & Ramsey County, within the corporation limits of the city of St. Paul, in Ramsey County, about three miles above the lower steamboat landing, and about two and a half miles above the upper landing. It represents a section of the Mississippi River of about 3 miles in length.

22 Question. State if that map correctly represents the piers of the railway bridge of the Minnesota Central Railway Co., now the Milwaukee and St. Paul Railway Co., across the Mississippi River, between St. Paul and Mendota, and the Mississippi River above and below said bridge, and between the piers thereof.

Answer. It does, according to the best of my knowledge and belief.

Question. Does it correctly represent the distance in the clear between the piers of said bridge; and, if so, what is the distance in the clear between the round pier and the one next to it towards the St. Paul shore?

Answer. It does, and the distance from the round or turn-table pier to the pier next to it towards the St. Paul shore in the clear is one hundred and sixteen feet.

Cross-examination by claimants & respondent:

I plotted that map myself, all except those dotted lines purporting to show the channel of the river. I know something about the channel of the river.

Question. Do those dotted lines correspond with the channel?

(Objected to by libellant as not cross-examination.)

Answer. I believe them to be in the vicinity of the channel, from having frequently visited the bridge when first under course of construction, and being in a row-boat on the river from pier to pier and seeing where the deepest water lay. I have seen boats frequently going by there and when they passed on the river. The steamers usually pass between piers Nos. 2 & 5.

(All testimony in regard to channel of river and course of steamboats objected to as not cross-examination by libellants.)

I mean the boats usually go upon the surface of the river between those piers, (2 & 5.) I can't tell between which of those intervening piers they usually go. The profile at the bottom of the map represents the bed of the river where the bridge crosses; it shows the depth
23 of the water at that time. The line of figures on the map on each side of the bridge represents the line of soundings in feet and tenths. Those soundings were taken in December, 1866, or January, 1867. It was average low water at that time. In the map the words "surface of ice" show the upper surface of the ice at that time and the figures under them along by the piers show the then distance from top of ice to the river bottom. I do not know who put on the dotted lines with the words channel.

Question. Do you know the channel of the river above and below the outside soundings on the map?

(Objected to by libellant as not proper cross-examination.)

Answer. I only know the probable channel of the river immediately outside of the outside soundings.

CHA'S A. F. MORRIS.

Deposition of James W. Lauderdale.

JAMES W. LAUDERDALE, a witness produced by libellants, being duly sworn, says:

My name is James W. Lauderdale. My age is 27 years. I am a pilot on the Mississippi & St. Croix Rivers. I am familiar with the channel of the Mississippi River between St. Paul and Mendota, and have been for five or six years. I was licensed as a pilot in June, 1868. I have run boats as a pilot between St. Paul and Mendota since the spring of 1867. I don't exactly remember how often—not very often.

Question. Are you familiar with the channel, current, and course of the river between the piers and railroad bridge above St. Paul?

Answer. Yes, sir; I think I am.

Question. Look at Exhibit A, prepared by the witness Charles A. F. Morris, and say if that represents the part of the Mississippi River on each side of the Minnesota Central Railway bridge.
24 Answer. I think it is a pretty good representation.

Question. Look at the dotted lines on said map, and state whether or not, as the fact is, they correctly represent the channel for vessels navigating the river.

(Objected to by respondent & claimants, on the ground that the question with the presence of map is leading.)

Answer. I think they do.

Question. In coming down the Mississippi River with a wide tow, loaded—that is to say, a steamboat and two or three barges—what precautions or preparations do you make in running between the piers of the bridge?

(Objected to by claimants, because it does not appear that he ever did

come with any such tow, and calls for an opinion on a state of facts never existing.)

Answer. If she had two abreast of her and one ahead, and there was no wind blowing, and when within 200 yards of the piers or about, I would stop her or work slow—would check the headway of the boat by stopping her or working her slow. I would not stop the headway of her entirely unless I see she was going to strike, and then I should back her up. If I thought she was going through clear of the piers of the bridge, I should let her go under slow-bell until she cleared them. If she had two on one side and one on the other, and they were not balanced—what I mean by that is, that when a boat has two barges on one side and one on the other, considering the side that has the two barges to be the heaviest part of the tow, and the wind a-blowing—if it is blowing very hard, I should insist on leaving one of the barges; blowing very hard, I would not go through at all. If the wind was blowing I would leave one barge.

Question. What other, if any, course would you adopt in a calm, or with wind not sufficient to affect the boat?

(Objected to as last above.)

Answer. I would not adopt any other course than that which
25 I have described; that is, providing the boat could back herself and barges up the river.

Question. For what reason would you, in approaching the piers with such a tow, check the headway or proceed under slow-bell?

Answer. For the reason that the boat would handle better under a slow-bell, and also, if I found out she was not going to clear the piers, I could back her up, and check her headway quicker than under a full head of steam.

Question. Have you ever taken such a tow through those piers, coming down stream?

Answer. I don't ever remember taking through so large a tow as that.

Question. How large a tow have you taken through?

Answer. A boat and two barges, coming down stream; they were generally loaded when we came through. I don't remember whether they were loaded or what they were loaded with positively.

Question. How many times have you taken such a tow through?

(Objected to by respondent & claimants, because he has stated that he never had taken one with 3 barges.)

Answer. I don't remember; two or three times, I should suppose.

Question. In going down stream and running between the turn-table pier and the next pier east, how broad a loaded tow is it prudent to take?

(Objected to by respondent & claimants, as because it does not appear that the witness has adequate experience in that behalf to testify as an expert.)

Answer. That is according to how the boat handles. Such a boat as
G. H. Wilson, no wind blowing, 80 or 90 feet in width. I speak of the G. H. Wilson because she is a powerful tow-boat and handles
26 well. With an ordinary handling boat, 80 or 90 feet would be a prudent tow. I never handled the Lady Pike.

Question. Would it make any difference with you in taking a tow through there, coming down stream, whether you had a stern or side wheel boat, with respect to the width of the tow you would deem it prudent to take through?

Answer. I don't know as it would make any difference; a side-wheel boat generally handles a little better in the wind.

Question. Would it make any difference with you in respect to the width of the tow you would deem it prudent to take through, coming down stream, whether you had a weak or powerful boat in proportion to your tow?

Answer. Yes, sir, it would make a difference from the fact that a powerful boat would handle the tow quicker in regard to backing up the boat.

Question. Have you ever seen the Lady Pike, and how many times?

Answer. I have seen her a great many times.

Question. Suppose that the wind had been blowing in gusts during the day so that you coming down had, at Mendota, had to back up on account of the wind, and turn around to get through the bridge at Mendota, would you have deemed it prudent to have run between the piers of the Minnesota Central Railway bridge, laid down on the map of Mr. Morris, with a boat of the size of the Lady Pike, and a tow 90 feet wide?

(Objected to by respondent & claimants, because the witness is asked his opinion of what the judgment should be in this case and nothing else, and is incompetent.)

Answer. It would depend upon how deep the barges were loaded. I don't know that blowing around would make any difference to me at Mendota; it would be all owing to circumstances. I cannot tell whether I would or not unless I knew first how the boat was handling and how hard the wind was blowing.

27 Question. Suppose the wind was blowing violently in gusts.

Answer. If the wind was blowing violently I do not think it would be prudent. I don't think it would be prudent to try it at all with a tow 80 feet in width.

Cross-examination by claimant:

I was first licensed as a pilot in June, 1868, between La Crosse & St. Paul, on the Mississippi and St. Croix River. Not above St. Paul any. Never have had a license above St. Paul. I have been engaged in the business off and on for 5 or 6 years; made it my exclusive business for two years. I became familiar with the river between St. Paul & Mendota in running on the river between said places, and in running between St. Paul and Mankato in different capacities, sometimes as steward & sometimes as pilot, but not as licensed pilot. I never run as a licensed pilot between St. Paul & Mendota. I have run as an unlicensed pilot. I have not run through as unlicensed pilot between St. Paul & Mendota *not* to exceed more than 7 or eight times; have piloted a boat through that bridge 7 or 8 times with different boats—the Carlton, the G. H. Gray, Chippeway Falls. I don't remember what others. I think the Mollie Mohler and Stella Whipple; all stearn-wheel boats. I mean that I have passed up piloting boats 3 or 4 times and down 3 or 4 times. The boats were loaded with railroad iron & freight going up, and with wheat and produced down. I never piloted one down with 3 barges. These boats last mentioned are small boats, that is, for the Mississippi River; ordinary for Minnesota River; a little smaller than the Lady Pike. The Lady Pike is a stearn-wheel boat; for a boat of her size she is not considered a very powerful boat; slow. Don't know size of her machinery or size of her boilers. I have seen them. She has two boilers. I never had any difficulty in getting through between those

28 piers; never had any accident. I run to the right of the turntable pier going up, and left going down; that is my usual course. Never have gone to the right of that pier coming down. I do

not know the circumstances attending the coming through of the Lady Pike at the time of the loss in question. I don't think I can tell what I would have done if I had been piloting the Lady Pike at that time without knowing all the circumstances. I passed up the river in the spring of 1866, not as pilot, and don't recollect anything about the piers then; I think while the water was high. If the water was high enough to run over the turn-table pier there would be less danger in high water. If the water was high, but so that I could see the break of the turn-table pier, and I knew there was not water enough to go over it, I should be tempted to go to the left of it coming down; under these circumstances I think I should prefer the left-hand channel coming down, because the piers above water would act as a guard or fender if I should come against them, whereas if I went on the right I might run on the sunken pier, and might stick my barge, and, if loaded very deep, be liable to swamp it. Boats usually run to the right of the turn-table pier going up and to the left coming down.

J. W. LAUDERDALE.

Further proceeding adjourned by consent of the respective parties, by their proctors & solicitors, until March 2nd, 1869, at 2 p. m.

MARCH 2, 1869.—Parties appeared by their aforesaid proctors & solicitors, and, by consent, further proceedings adjourned until March 3d, 1869, at 2 p. m.

MARCH 3d, 1869.—The aforesaid parties to this suit, by their aforesaid proctors & solicitors, appeared, and the following proceedings were had:

Deposition of Foster L. Balch.

FOSTER L. BALCH, a witness produced on the part of the libellant, being first duly sworn, says:

29 My full name is Foster L. Balch. I am 34 years old. I reside at Shakopee, Minn., which is more than 100 miles from Milwaukee, Wis.; have lived at Shakopee about five years.

Question. Did you know a firm doing business in Shakopee on the 23d April, 1866, under the firm-name of How & Balch; if yea, of what individuals was that firm composed, and in what business were they then engaged?

(Objected to by claimant as leading.)

Answer. I do; the firm is composed of David L. How & myself; the firm was engaged in insurance business.

Question. What business relations, if any, did they hold on the 23d day of April, 1866, to the Germania, Hanover, Niagara, & Republic Fire Insurance Companies, then doing business under the name of the underwriters' agency?

(Objected to by claimant as leading, irrelevant, incompetent, and immaterial, and not the best evidence.)

Answer. Agents for that company.

Question. State for what purpose and with what powers.

(Objected to by claimant as not the best evidence, and asks the question: Were such instructions, if any, given verbally or in writing? Answer. In writing. Claim't asks this question. In what way did you derive your power and instructions to act for these companies; or, in other words, were your authority and instructions conveyed orally or in writing? Answer. In writing. Claimant & respondents insist upon their objection to libel'ant's last question.)

Answer to libellant's last question. For issuing policies on fire and certificates on marine risks.

Question. Look upon the paper now handed you, marked by the commissioner Exhibit "A" to testimony of Charles Etheridge, and state if you know by whom the same was executed, and whose signature is appended to that certificate, and who wrote the same.

30 (Objected to by claimant & libellant, on the ground that no foundation has been laid.)

Answer. I issued the certificate. The signature is How & Balch. I wrote it.

Question. In what capacity were the firm of How & Balch acting, and for whom, in the execution of Exhibit "A?"

(Objected to by claimant & respondent as incompetent, irrelevant, and not the best evidence, and no foundation laid.)

Answer. As agents for the underwriters' agency, composed of the companies above named.

(Claimants & respondents objected to witness testifying as to what companies underwriters' agency was composed of.)

Question. Do you know the handwriting of William H. Anderson?

Answer. I do.

Question. Look upon the paper now handed you, marked by the commissioner "Exhibit B" to Charles Etheredge's testimony, and state if you know in whose handwriting is the signature thereto subscribed.

Answer. To the best of my knowledge and belief it is William H. Anderson's signature.

F. L. BALCH.

And I do further certify that each of the aforesaid witnesses, before testifying, was by me duly and carefully examined, cautioned, and duly sworn to testify the truth, the whole truth, and nothing but the truth, in said suit; and that the preceding depositions were reduced to writing by me, and each deposition was by me carefully read to the witness subscribing the same before his signature was affixed thereto, and that each of said witnesses subscribed their respective depositions in my presence; and that I am not of counsel or attorney for either of the parties to the said suit, nor am I interested in the event thereof.

H. E. MANN,
U. S. Commissioner, Dist. of Minnesota.

DISTRICT OF MINNESOTA, *ss:*

I hereby further certify that the papers hereto attached, and
31 marked Exhibits A, B, C to the testimony of Charles Etheridge, are the same exhibits referred to in the foregoing depositions.

H. E. MANN,
Fees, $20.20. *U. S. Commissioner, Dist. of Minnesota.*

[5-cent stamp, cancelled.]

EXHIBIT "A."

Certificate of insurance.

Exhibit A.] No. 2, Underwriters' Agency. [$8,100.00.

GERMANIA, HANOVER, NIAGARA,
& REPUBLIC FIRE INSURANCE COMPANIES OF THE CITY OF NEW YORK,
Shakopee, Minn., April 23d, 1866.

This is to certify that W'm H. Anderson is insured, for account of

whom it may concern, under and subject to the conditions of policy No. 922, issued by the above-named companies, in the sum of eighty-one hundred dollars, each company bearing one-fourth of the risk taken. upon six thousand seven hundred and fifty-three bushels of wheat, in board cargo of the barge Salmon, at and from Shakopee, Min., to Savan'ah, Ill's, at the rate of 85.4 per cent., which premium of $68.85 is hereby acknowledged to have been received.

Loss (if any) payable to W'm H. Anderson or order hereon, at Shakopee, Min., upon return of this certificate.

Assets, $3,000,000. HOW & BALCH, *Agent'.*

Countersigned:
A. STODDART,
General Agent, New York.

(Endorsed:) W'm H. Anderson. Exhibit A to testimony of Charles Etheredge. H. E. Mann, com'r.

EXHIBIT "B."

Exhibit B.—Particular statement.

I shipped, 24th April, A. D. 1866, at Shakopee, Min., on board the st'boat Lady Pike & barge Salmon, bound for Savan'ah, Ill., sixty-seven hundred and fifty-three $\frac{25}{60}$ bushels of wheat, insured in underwriters' agency, under policy No. 922 of the Shakopee agency, and said wheat was totally lost on the same day, in the evening, by the sinking of said barge in the Mississippi River, a short distance above St. Paul, Minn., by the perils of navigation.

Dated, St. Paul, May 18th, 1866.

32 W'M H. ANDERSON.

Exhibit B to Cha's Etheridge's testimony.

H. E. MANN, *Com'r.*

EXHIBIT "C."

Exhibit C.] ST. PAUL, *July* 3, 1866.

$8,100. Received of the "underwriters' agency," composed of the "Germania," "Hanover," "Niagara and Republic" Insurance Companies of New York, by the hand of Charles Etheridge, special agent, the sum of eight thousand one hundred dollars, being in full for all claims for loss and damage by perils of inland navigation and transportation on 6,753$\frac{25}{60}$ bushels wheat in board of barge Salmon, (per steamer Lady Pike,) which loss occurred on the twenty-fourth day of April, 1866, insured under policy No. 922, of Shakopee, Minn., agency, and in consideration of said payment the said The Germania, Hanover, Niagara, and Republic Insurance Companies are hereby subrogated to all my rights, claims, and interest in said loss, together with all claims and demands which I may have against all persons and things on account of said loss, with power to demand, receive, prosecute, and settle the same in my name, or otherwise.

Witness my hand and seal the day and year first above written.

W'M H. ANDERSON. [SEAL.]

Witness: JOHN MOULTON.

[5-cent stamp, canceled.]

Exhibit C to Cha's Etheridge's testimony.

H. E. MANN,
Commissioner.

Deposition of John B. Henion.

In district court of United States, district of Wisconsin. In admiralty.

THE GERMANIA INSURANCE COMPANY, THE Niagara Insurance Company, The Hanover Insurance Company, The Republic Insurance Company
vs.
THE STEAMER LADY PIKE, CHRISTOPHER G. Pearce, William W. Hanley, William Knight, claimants.

UNITED STATES OF AMERICA,
District of Iowa, ss:

JOHN B. HENION, being carefully examined & cautioned, and sworn to testify the whole truth, testifies:

33 My name is John B. Henion. My age is fifty-four years. My residence is Dubuque, State of Iowa, which is more than one hundred miles from Milwaukee, Wis., the place where the above case is set for trial, and is out of the district of Wisconsin. My occupation is manufacturing spring-beds. I was surveyor of customs for the port of Dubuque, Iowa, district of New Orleans, from May, 1861, to May, 1867. In the spring of 1866, at port of Dubuque, Iowa, I took the admeasurement of the steamer Lady Pike. Her breadth of beam at midships was thirty-four feet. Her extreme breadth, including guards and everything, at midships, is forty-two feet and eight inches.

JOHN B. HENION.

Sworn and subscribed to by witness in my presence this 8th day of April, 1869, as witness my official signature

JOHN M. BALLEN,
United States Commissioner for District of Iowa.

Deposition of Charles T. Spencer.

District court U. S., district of Wisconsin.

GERMANIA INSURANCE COMPANY & OTHERS
vs.
STEAMBOAT LADY PIKE AND BARGE SALOMON.

DISTRICT OF WISCONSIN, *ss:*

Before Francis Bloodgood, court commissioner.

The deposition of Cha's T. Spencer on behalf of the libellants, taken by & before said com's'ner at his office, in the city of Milwaukee, Wisc., March 6th, 1868. Present, E. Mariner, esq'r, of counsel for the libellants, & W'm Pitt Lynde, esq'r, of counsel for the respondents.

CHARLES T. SPENCER, being duly sworn on behalf of the libellants, deposes & says:

I reside at La Crosse. Am 21 years of age. My occupation is pilot on the Mississippi River between Mendota & La Crosse. I am familiar with the channel of the Mississippi River between Mendota & St. Paul; have

been so familiar about 4 years. I was licensed as a pilot May 23,
34 1865. I had been running there the year before on occasional trips, not constantly; since I have been licensed I have run as the boats required me. It is not a regular trade with me.

Quest. How often were you running there as pilot during the years 1864, 1865, & 1866?

Ans. A few times in '64 & '65, & in the spring of '66 I was on the st'm'r Keokuk, which made several trips there. In the summer of that year I was on the st'm'r Ocean Wave, and made a trip or two there. In the fall I was on the st'm'r Cutter, that ran from La Crosse to the Minn'a Valley R. R. transfer-house & Mendota.

Quest. Look at Exhibit "A," & say if that represents the part of the Mississippi River on each side of the piers of the Minn'a Central R. R. bridge.

Ans. Yes; it does.

Quest. Will mark on that the channel for vessels navigating the the river?

And. Yes, sir. I have.

Quest. You have marked channels between the turn-table pier & the pier next north of it, and between the last-named pier & the one next north of it; which is the usual channel in high water, or are they both equally available in high water?

Ans. The channel between the turn-table & the first northerly pier is more available in high water than the other channel, because the water rises over the turn-table, and makes more room there.

Quest. Is that so when the water does not rise high enough to make it safe to run over the turn-table pier?

Ans. No, sir; because the other channel is the widest.

Quest. When the water is high enough to run over the bottoms how much water is there on the turn-table pier?

Ans. There is 4 feet & upwards when the water is just over the bottoms.

Quest. What precautions or preparations do you make in running through those piers with a wide tow; that is, 2 or 3 barges?

35 Ans. Coming down just above the piers I should lay my tow so as to make allowance for the current. I don't know as any particular preparation would be required concerning the barges; we usually come down slow, under a slow-bell, until we get directly between the piers, & then we give the boat a full head of steam.

Quest. How much room would you want between the piers over & above the width of your tows to go through safely?

Ans. I would want twenty feet to spare—ten feet on each side—over and above the width of my tow; that is, on a still day.

Quest. Would you want more or less room in high water than in low water?

Ans. Neither more nor less.

Quest. How would it be on a windy day?

Ans. If the wind were blowing steady & not too hard, I think 20 feet would be sufficient.

Quest. In running through between the turn-table pier & the next one north of it, is there a pretty strong current right next to the turn-table pier right out into the channel for a short space, some ten or twelve feet?

Ans. Yes, there is a pretty strong current of that kind there, caused by the pier dividing the water. I don't know how far into the channel it extends.

Quest. How would it affect the motion of a boat, I mean the direction, to run into that current close to the pier?

Ans. It would affect a light boat more than a heavy one. I think with a light boat headed in a certain direction it would have the effect of carrying her off the pier slightly.

Quest. How would it affect a boat with a heavy tow?

Ans. I don't think it would affect a boat of that description very much. I have never paid any attention to that current; have made my calculations in the quartering current for the purpose of missing pier No. 4. This current quarters very nearly with the channel, & very near
36 with what I have marked as my courses. The channel generally follows the current, as the current generally cuts the sand out.

Quest. How wide a tow have you ever taken thro' there—that is, the width over boat & all?

Ans. The steamer Keokuk & 2 barges, the whole width of which I should say would be about 90 feet.

Quest. Would you be willing to take a wider tow thro' there than that? Would you deem it prudent?

Ans. Not comming down stream.

Quest. Would it make any difference with you in taking a tow thro' there whether you had a stern or side wheeled boat, with respect to the width of the tow you would deem it prudent to take thro' there?

Ans. I think I would rather take a side-wheeled boat. a tow 90 feet wide I would as about as leave have a stern-wheeled boat.

Quest. Would it make any difference with you in that respect whether you had a weak or powerful boat in proportion to your load?

Ans. A powerful boat would shove herself thro' the piers quicker, & with less danger to the tow.

Quest. Suppose that the wind had been blowing in gusts during the day, & you were coming down, & at Mendota it had bothered you so that you had to back up & turn around to get through that bridge, would you have deemed it prudent to have run between those 2 piers with a boat of the size of the Lady Pike, and a tow 90 feet wide?

Ans. Not with the Lady Pike, I don't think. She is a high boat, & would catch a great deal of side wind. I mean if the wind were blowing from either side, what we call beam-winds, on such a kind of a day, I should want a tow-boat after the description of the G. H. Wilson. She is low, & has no cabin, except a texas for the officers of the boat, & she is very powerful.

Quest. How are the bluffs on the Minn'a shore, on the right bank coming down?

37 Ans. They approach the water close, as far down the bank of the river as the bottom land, where Lake Pickerel is, about 2 miles above this bridge, & then at that point the river takes a slight bend to the left. The bluffs are continuous right along. The bluffs come back to the river again about ¾ mile below the bridge, leaving a bottom land on the right side of the river about a half mile wide. I believe there is one little gap in the bluff, between Mendota & Lake Pickerel, a short way above Lake Pickerel, about 2½ miles above the bridge. I don't remember any other of any importance—nothing that I have noticed as being likely to make any difference in the wind in steering.

Quest. In high water, with a tow 90 feet wide, between which two of those piers would you run?

Ans. I should run between piers No's 4 & 5—it is wider—unless the water were high enough to let me run over the turn-table pier.

CHA'S T. SPENCER.

Sworn to and subscribed before me this sixth March, 1868.
FRANCIS BLOODGOOD,
U. S. Commissioner.

Deposition of John G. Snow.

United States district court, district of Wisconsin.

GERMANIA INSURANCE COMPANY & OTHERS
vs.
STEAMBOAT LADY PIKE AND BARGE SALOMON.

DISTRICT OF WISCONSIN, *ss:*

Before Francis Bloodgood, court commissioner.

The deposition of Jno. G. Snow, on behalf of the libellants, taken by & before said commissioner, at his office in the city of Milwaukee, March 6, 1868. Present, E. Mariner, esq'r, of counsel for the libellants, & W'm Pitt Lynde, esq'r, of counsel for the respondents.

JOHN G. SNOW, being duly sworn on behalf of the libellants, testifies as follows: My name is Jno. G. Snow. I reside at North La
38 Crosse in this State. Occupation is pilot on the Upper Mississippi & Minn'a Rivers. I am 33 years old. I have been acting as pilot since 1861 on the Missi'ppi & Minn'a Rivers; have been piloting since 1859.

Quest. Are you familiar with the locality of the piers of the Minn'a Central R. R. bridge across the river between St. Paul & Mendota?

Ans. I am, and with the navigable river & channel at that place. I have been navigating that part of the river every season since the spring of 1861; have navigated them often during that time—once a week, & sometimes twice a week. Those piers were put in there the winter of 1854–1855.

Quest. Look at the map Exhibit A, & say if the channel of the river as delineated on that map is correctly laid down.

Ans. Yes, sir; I think it is.

Quest. Is the course of the river & the location of the piers correctly set down on the map as you remember it?

Ans. It is.

Quest. What is the course of the current of the river between piers Nos. 3 & 4?

Ans. I think it runs diagonal with the piers. It sets off towards the 4th pier as you go in between the piers.

Quest. What makes it set over so?

Ans. There is a bar extending out from the west shore, commencing at the ferry, 1¼ miles above the piers. It runs down nearly to the piers. It may stop 50 feet above the piers. The channel, in running down the east shore, & coming down to the point where we start out to make the crossing between the piers, there is a gravel or stone point on the east side, which makes out into the river a little ways, which throws the force of the current over to this bar on the east shore. The current striking that bar, it rebounds, & runs diagonal across the piers towards the east shore. I have had to pass thro' those piers so often with heavy tows, both up and down, that I have taken great pains in trying to learn

the course of the current there. A raft will always follow the
39 strongest course of the current unless pulled out of it by oars, &
I have noticed that they would draw over from the east shore to the foot of this bar on the west shore, & then they would start the other way. I have often been on a boat coming up the river, & would see one of these rafts coming, & I would naturally suppose it would come thro' the steamboat channel—that is, the low-water channel between the 3rd & 4th piers; it would appear to me so—&, instead of going thro' there, they would suck through the 4th & 5th piers. I have also noticed the currents drawing off in that way, going up with a light steamboat & light barges in a calm, still day.

Quest. Do you know the st'm'r Lady Pike?

Ans. Yes, sir; have known her since the spring of 1866, I think. I saw her a great many times in the river; met & passed her both going up & coming down.

Quest. Would 3 barges, loaded with from 15,000 to 18,000 bus. wheat, be a light or heavy tow for her?

(Objected to, as witness has shown no knowledge of her power or capacity.)

Ans. I should think it would be a heavy tow.

Quest. Have you ever seen her machinery?

Ans. Not to notice it in particular.

Quest. Do you know whether she is an easy or awkward boat to handle?

Ans. I never handled her myself, but from what I have seen others handle her, I should think she was an awkward boat to handle.

(This answer objected to.)

Quest. Have you noticed that more than once?

(Objected to.)

Ans. I have. I could not state the time. I have noticed it at leaving the port of St. Paul, Prescott, Winona; also in her running over Beef Slough. We pilots call that portion of the Missi'ppi River from Alma to Wabesha Beef Slough—a distance of 10 miles—a very shallow water—the worse part of the river between St. Paul & La Crosse to run, especially in low water.

40 Quest. Who was handling the boat at the time you have seen her acting badly?

Ans. Corydon Looney.

Quest. Is he reputed a good pilot?

Ans. He is.

Quest. Do you make any preparation with a wide & heavy tow to run down through those piers; &, if any, what?

Ans. Nothing more than running over a "slow-bell."

Quest. How much water is there over that turn-table pier when the water is high enough to go over the bottoms?

Ans. I should judge there was 5 feet.

Quest. Is that a difficult or easy place to run between the piers in the day-time?

Ans. That would depend upon what kind of a day it was, windy or calm. On a windy day, I think it would be a very difficult place to run; that is, with a side wind or a quartering wind.

Quest. Take it in an April day, with puffs & gusts of wind from the west bank coming down?

Ans. There is danger in running, for the reason that a man can't tell just where a gust will catch him. On a calm day I don't think there would be any difficulty in running it.

Quest. With a boat of the beam of the Lady Pike, how many 20-foot barges would you deem it prudent to run there with in tow?

Ans. That would depend on the stage of water in the river. When the water is so high that there is 4 feet on that turn-table, a boat of her size could go thro' down stream with 4 such barges in tow. But if the water was so that she could not go over that turn-table, 2 barges would be all that I should think it safe that I would be willing to go thro' with myself.

Ques. Would you undertake to run more than two barges between the turn-table pier & pier No. 4 down stream?

A. I would not.

Quest. Does the width of the turn-table pier, in y'r opinion, add anything to or increase the course of the channel to the left bank of
41 the river coming down between the turn-table pier & pier No. 4?

Ans. I think it does.

Quest. How swift is the current at that point in high water, with 3 to 4 feet of water on the turn-table pier?

Ans. About 6 miles current.

Quest. Would the current that you mentioned going diagonally across the river have a strong tendency to send a tow toward pier No. 4?

Ans. I think it would.

Quest. Which would act quicker on a tow, a current setting in that direction or a sudden & pretty strong wind?

Ans. The wind would act quicker.

Quest. Which way would a beam-wind, striking a boat like the Lady Pike, with a tow of 3 barges, laden with from 15,000 to 18,000 bus. grain, drawing from 3½ to 4 feet water, & boat light, drive the head of the tow, a beam-wind on the starboard side from the west shore, the tow being just headed toward the centre between the piers, and just about to enter between the piers, when the wind struck her?

Ans. A beam-wind that way would throw her stern towards the eastward shore & her head towards the westward.

Quest. What is the effect of a beam-wind upon a stern-wheeled boat in changing its course?

Ans. A stern-wheeled boat will naturally head to the wind. If you want to run a straight course you must head a stern-wheeled boat a little to the wind, as she would drift naturally from her course.

Quest. Would this tendency to head in to the wind be increased or diminished by her having a tow?

Ans. I think it would be diminished a little, a trifle difference.

Quest. Would it be increased or diminished by her being light, she having a tow?

Ans. I think there would be some difference. If she were light she would head a little quicker than she would if she were loaded.

42 Cross-exam'n:

I have been accustomed to pilot tow & packet boats.

Quest. Did you run your tows there as often as twice a week between Mendota & St. Paul during the season of navigation?

Ans. I don't think we averaged twice a week during the season of navigation with a tow.

Quest. Did you average 3 times in two weeks?

Ans. When I was running on the Minn'a River, from St. Paul to Mankato, we averaged a round trip, that is, up & back, a week. When I was running from La Crosse to St. Paul & Mendota, we would make the round trip in 3 days; some weeks we would go to Mendota twice a

week, & some weeks not but once a week, just as it happened if they had a load for us at the elevator just below Mendota.

Quest. What tow-boats have you been pilot on when you were running from St. Paul to Mendota?

Ans. Different boats. The Northwestern Union Packet Co., I don't believe, has a tow-boat that I have not piloted.

Quest. How many barges did you generally take in tow running down from Mendota to St. Paul?

Ans. From 1 to 2. Never more than two down the river to my recollection.

Quest. Why did you never take more than two?

Ans. We never happened to have more than two, except one occasion; then the water was low, & I did not deem it safe to take more than two barges thro' the piers. At that time I was on the st'm'r Diamond Joe. I don't know her exact beam; I think from 22 to 24 feet; never measured the boat; she has two cylinders, I think 14 to 16 in. bore, 4½ feet stroke.

Quest. In y'r direct examination you stated that the current running diagonally across the river from the west shore was ab't 6 miles per hour. Did I understand you correctly?

Ans. I stated that the current running thro' the piers was ab't 6 miles an hour.

43 Quest. Before you enter those piers, in crossing from the east shore, you straighten down to go thro' the piers, don't you?

Ans. Yes, sir; a little. After getting out into the river a-ways, it is what we call a long crossing.

Quest. Do you straighten down before you get opposite pier No. 4?

Ans. As a general thing, unless the wind is blowing, we straighten ab't 4 or 5 lengths above the piers, but not until we get opposite to pier No. 4. In starting out from the east shore you are nearly straight for pier No. 4; you don't have to make much of a turn there.

Quest. Do you mean that the channel that you run, after you start from the east shore, carries you through between piers 3 & 4?

Ans. It does, with a very slight change in our course after leaving the east shore—so little change that a man not accustomed to it would not notice it.

Quest. What do you mean, then, by saying that the channel runs across & strikes the west shore some 50 f't above the bridge?

Ans. I did not say that the channel struck the west shore some 50 feet above the bridge. I said that the current struck the bar above the bridge, rebounded, & ran diagonally towards the east shore.

Quest. Does that affect the current running between piers 3 & 4; and, if so, to what extent?

Ans. It does, some. Of a calm day a boat in going thro' between piers Nos. 3 & 4 will drift from four to 6 feet towards pier No. 4.

Ques. Does it make any difference whether she is light or not?

Ans. Yes.

Ques. Does her speed make any difference?

Ans. Yes.

Ques. But any boat will drift that on a calm day?

Ans. Most any that I have been on will.

Quest. Does it drift any more in low water than in high?

44 Ans. I don't think a boat drifts as much, for the reason that the current is not so strong on the water when low as it is in high water.

Quest. You think, then, that the reaction in the current, running diagonally across the stream, is greater in high water than in low water?

Ans. It is some—not to a great extent.

Quest. Does not the great body of this current run down thro' the bridge without striking the west shore or the sand-bar at all above the bridge?

Ans. When the water is just in the banks the great body of the current would strike the shore above the bridge. I have frequently run this west shore before these piers were built, & a boat would naturally draw off with me from the west shore unless I held her a little into the shore to keep her from going off; that is, going up the river, until I had got opposite the foot of the bluff on the east shore. This would be the case 100 yards above the piers.

Quest. How much spare space do you think it necessary to have to run between those piers in an ordinary stage of water, in calm weather, coming down the river with a tow?

Ans. I should want ten feet on each side, as a proper precaution.

Quest. Don't you think 10 feet on each side is ample precaution, so far as space goes?

Ans. In an ordinary case it would. We are all liable to accidents at some time; a tiller rope might break, or an engine might break down, & then I don't think that would be space enough.

Quest. Do you consider it dangerous running a steamer in the Mississippi River within 10 feet of any stationary object not more than 150 feet long where there is good water?

Ans. That would owing to how the obstruction laid, & which side of it you went. For example, if you run the lower side of it you might run within one foot of it with safety, but if you run the upper side of it there might be danger.

45 Quest. A st'm'r, with a heavy tow straightened down to pass thro' the piers & just entering the piers, & a heavy gust of wind strikes her on the starboard beam, wouldn't she necessarily drift to the larboard?

Ans. Yes, sir; she would drift some.

Quest. Wouldn't she drift in proportion to the force of the wind?

Ans. That would depend upon whether she was heavily or lightly loaded.

Quest. Would she not, in either event, drift in proportion to the force of the wind?

Ans. A heavy boat would not drift as easily as a light boat. I don't think she would drift as much with the same wind were she heavily loaded?

Quest. Would she not, with the same load, drift in proportion to the force of the wind?

Ans. No; I do not think so.

Quest. These tow-boats with barges. The barges are fastened so that they project beyond the bow & run back not so far as the stern of those steamers as a general thing; don't they?

Ans. Owing to what kind of a tow a man has. If we have but one barge we get the bow of the barge aft the bow of the steamboat; that is the usual way; with 3 barges there are different ways.

Quest. If a tow-boat has 3 barges in tow, projecting 30 or 40 feet beyond her bow, & extending back to near the centre of the boat, or a little beyond it, would a beam-wind bring her bow up to the wind at all, the boat being stern-wheeled?

Ans. Yes, it would, for the very reason that there is more weight

at the bow of the st'mboat than there is at the stern, & a stern-wheeled boat will always head to the wind.

Quest. Does not it head to the wind for the very reason that there is more heft at the stern than at the bow of a stern-wheeled boat?

Ans. No.

Quest. A stern-wheeled boat, when light, not loaded; is she not heavier at the stern than at the bow?

Ans. Some of them are & some not.

46 Quest. Where is her machinery, boilers, &c.?

Ans. Her boilers are forward, & her engines are aft, amidships.

Quest. You think, then, that the lightness of the stern will carry the heft of the bow against the wind?

Ans. Yes, sir; I do. If you have a stern-wheeled boat drawing 2 feet more water at her stern than at her bow you can't hold her head to the wind.

Quest. Did you, while navigating that river from St. Paul to Mindota with tows, ever *lay* by on ¾ of wind?

Ans. I have.

Quest. Is it a common occurrence?

Ans. It is, coming down stream. It is not going up.

Quest. When you had started out from Mendota in ordinary weather have you ever layed by between there and St. Paul on ¾ wind?

Ans. Not that I recollect of, below Mendota. I have laid up a number of times at Mendota.

Quest. Did you ever *lay* by on ¾ of the wind, unless the wind was blowing violently at the time, & you had reason to believe it would continue to blow?

Ans. No; I never laid by unless the wind was blowing at the time, & I considered it dangerous to run through the piers.

Redirect:

Quest. Would you run as close to a rock as you would to a sand-bar?

Ans. I would not, if it could be avoided any way.

Ques. Would you be willing to try to run between two stone piers where it would, to get through, compel you to run as close to each of them as you would run close to one pier where you had the open river on the other side of you?

Ans. I don't think I would try to run thro' between two piers & run as close as I would run to one pier with open water on the other side of it, because, in the latter case, you have but one object to dodge. In the former case there is double risk of striking, & your attention is distracted.

47 Quest. You answered, in y'r cross-exam., that in ordinary cases ten feet would be space enough on each side of your tow. Did you mean to qualify that by supposing it calm weather?

Ans. I did.

Quest. Is there any break in the bluffs on the right bank of the river below the head of Pickerel Lake until after you get below the bridge-piers?

Ans. There is not—nothing more than little gullies running up into the bluff from 100 to 150 feet. Nothing to interfere with the course or the wind at all.

JOHN G. SNOW.

Sworn to and subscribed before me this 6th day of March, 1868.

FRANCIS BLOODGOOD,
U. S. Commissioner.

Deposition of W'm H. Anderson.

District court of the United States, district of Wisconsin. In admiralty.

GERMANIA INSURANCE COMPANY ET AL.
vs.
STEAMBOAT LADY PIKE ET ALS.

DISTRICT OF WISCONSIN, *ss:*

Before Francis Bloodgood, court commissioner, at his office, in the city of Milwaukee, on the 4th March, 1869.

The deposition of W. H. Anderson, on behalf of the libellants, by and before said com'r, at the time and place aforesaid. Present, E. Mariner, esq., of counsel for the libellants, & H. M. Finch, esq'r, of counsel for respondents.

W'M H. ANDERSON, sworn on behalf of the libellants, says: Am 49 years of age. I live at Shackopee, Scott Co., Minnesota, and *was* in spring of 1866. Know the Lady Pike. I made a contract with the officer of that boat to carry wheat for me from Shackopee to Chicago. I made it on board the Lady Pike, at Reed's Landing. Between the 16th & 20th of April, 1866, (say between 15th & 20th,) I delivered grain under that contract to the officers of the boat.

Ques. How much of it was laden on the barge Salmon?

48 Ans. 6,753 bushels and 25 pounds I got a bill of lading for the whole of the wheat; three barges taken in on that one bill of lading; nineteen thousand & some odd bushels altogether. This wheat on the Salmon was mine. After I made the contract I went home; went to St. Paul on the Lady Pike. The bill of lading for the three cargoes of wheat was all included in one. I don't know where the bill of lading is now. I can't tell when I last saw the bill of lading. I have looked all over my papers for it, but I can't find it. I did not send it to Sherman, Hall & Pope, consignees. That cargo left Shackopee on the night of the 23d of April, 1866—about day light of 24th, I think. When I got up, the boat was gone. I insured that cargo on the Salmon in the underwriters' agency of New York. That agency is composed of the Germania, Hanover, Niagara, & Republic Insurance Companies. I affected the insurance with Howe and Balch, the agents at Shok'pee, f'r $8,100, at $1.20 per bushel. That it is what I aimed to insure it a bushel. The wheat at time of the shipment was worth at that place all it was insured for. I was buying wheat there as a business, so that I know the price. The cargo on the Salmon was sunk. I have been paid the am't of the loss, at St. Paul, on the 3d day of July, 1866, by Mr. Etheridge, the ag't at St. Paul for the underwriters. I gave him a rec'pt for the money. I had a certificate for the insurance under an open policy. That certificate, I think, was given up to Mr. Etheridge. The am't of the loss for which I was paid was $8,100.

Cross-exam'd:

I was the sole owner of the wheat on the barge Salmon. The bill of lading, I think, was the usual bill of lading given by boats navigating that river in the usual form for sending wheat in bulk on barges.

W'M H. ANDERSON.

Sworn to and subscribed before me this 4 March, 1869.

FRANCIS BLOODGOOD,
U. S. Com'r.

49 UNITED STATES OF AMERICA,
District of Wisconsin, ss:

I, Francis Bloodgood, a commissioner duly appointed by the circuit court of the United States for the district of Wisconsin, under and by virtue of the acts of Congress entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed February 20th, 1812, and the act of Congress entitled, "An act in addition to an act entitled 'An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States,'" passed March 1st, 1817, and the act entitled, "An act to establish the judicial courts of the United States," passed September 24th, 1789, do hereby certify that the reason for taking the foregoing depositions is the stipulation of the parties referring it to the undersigned to take such testimony.

I further certify that, on the day stated in the caption of said depositions, I was attended by the parties or counsel, as stated in said captions, and by the said witnesses, who were of sound mind and lawful age; and the said witnesses were by me first carefully examined, cautioned, and sworn to testify the truth, the whole truth, and nothing but the truth, in the cause aforesaid, and the depositions reduced to writing in the presence of said witnesses and in my presence; and, from their statements, and after carefully reading the same to said witnesses, subscribed the same in my presence, I have retained the said deposition in my possession, for the purpose of delivering the same with my own hand to district court, dist. Wis., the court for which the same were taken.

And I do further certify that I am not of counsel or attorney for either of the parties in said deposition and caption named, nor in any way interested in the event of said cause named in the said caption.

In testimony whereof I have hereunto set my hand this 12 day of June, in the year of our Lord one thousand eight hundred and sixty-nine.

FRANCIS BLOODGOOD,
United States Commissioner, duly appointed by the Circuit Court of the United States for the District of Wisconsin.

50 (Copy.)

Enrollment.

FORM C.] [No. .

Enrollment in conformity to an act of the Congress of the United States of America, entitled, "An act for enrolling and licensing ships or vessels to be employed in the coasting-trade & fisheries, and for regulating the same," approved February 18, 1793, and of "An act to regulate the admeasurement of tonnage of ships and vessels of the United States," approved May 6, 1864.

No. 13. Permanent where surrendered, port of Galena.

Henry C. Short, of Savanna, Illinois, having taken or subscribed the oath required by the said act, and having sworn that he is attorney of the Western Union Railroad Company, whereof Geo. A. Thomson is president and W'm V. Baker secretary, and that said company are sole owners of the ship or vessel called the Salmon, of Savanna, whereof John W. Stewart is at present master, and, as hath been sworn, is a citizen of the United

States; and that the said ship or vessel was built at Winnecona, Wis., in the year 1864, as appears by her certificate of read-
Date of surrender, 12 day of March, 1867.
measurement, No. 141, dated and issued at this office the 12th of September, 1866; and the said certificate of re-admeasurement having certified that the said ship or vessel has one deck and no mast, and that her length is one hundred twenty-four $\frac{8}{10}$ feet; her breadth, twenty $\frac{4}{10}$ feet; her depth, six $\frac{}{10}$ feet; and that she measures one hundred & twenty-nine tons and sixty-hundredths, viz:

	Tons.	100ths.
Cause of surrender, owners changed: act of the Congress of the United States. Capacity under tonnage-deck.....	129	60
Capacity between decks above tonnage-deck.	"	"
Capacity of enclosures on upper deck, viz....	"	"
Total tonnage.....	129.	60

And that she is a barge-boat, has no cabin on deck, and plain head.

And the said Henry C. Short, having agreed to the description and admeasurement above specified, and sufficient security having been given according to the said acts, the said barge-boat has been duly enrolled at the port of Galena.

Given under my hand and seal of the port of Galena this 22d day of September, in the year one thousand eight hundred and sixty-six.

[SEAL.] DANIEL WANN,
Surveyor of Customs.

51

CUSTOM-HOUSE,
Galena, December 16th, 1868.

I hereby certify that the within is a true copy of the enrollment of the barge Salmon, which is of record in this office.

In testimony whereof I have hereunto set my hand and affixed the seal of my office the day above written.

[SEAL.] DANIEL WANN,
Surveyor of Customs.

(Indorsed:) Copy. No. 13. Enrolment of barge Salmon. Burthen of $129\frac{60}{100}$ tons. Issued at the port of Galena the 22nd September, 1866.

52

Enrollment.

Form C.] [No.

Enrollment in conformity to an act of the Congress of the United States of America, entitled "An act for enrolling and licensing ships or vessels to be employed in the coasting trade and fisheries, and for regulating the same," approved, February 18, 1793, and of "An act to regulate the admeasurement of tonnage of ships and vessels of the United States," approved May 6, 1864.

No. 14. Permanent. Where surrendered, Galena, Illinois.
Henry C. Short, of Savannah, Illinois, having taken or subscribed the oath required by the said act, and having sworn that he is the attorney of the Western Union Railroad Company, whereof Geo. A. Thomson is president and W'm V. Baker secretary, and the said company are sole owners of the ship or vessel called the Trout, of Savanna, whereof Benjamin

Bradford is at present master, and, as hath been sworn, is a citizen of the United States, and that the said ship or vessel was built at Winnecona, Wis., in the year 1864, as appears by her certificate of enrollment, No. 9, dated and issued at this office the 16th May, 1865, and now surrendered on the change of the name of said company; and the said certificate of enrollment having certified that the said ship or vessel has one deck and no mast, and that her length is one hundred and twenty-five $\frac{6}{10}$ feet, her breadth twenty $\frac{5}{10}$ feet, her depth four $\frac{3}{10}$ feet, and that she measures eighty-three tons and sixty-nine hundredths, viz:

Date of surrender, 12th day of March, 1867.

	Tons.	100th.
Capacity under tonnage-deck	83	69
Capacity between decks above tonnage-deck	"	
Capacity of inclosures on upper deck, viz	"	
Total tonnage	83	69

Cause of surrender, change of owners. An act of the Congress of the United States.

And that she is a barge-boat, has no cabin on deck, and plain head.

And the said Henry C. Short, having agreed to the description and admeasurement above specified, and sufficient security having been given according to the said acts, the said barge-boat has been duly enrolled at the port of Galena.

Given under my hand and seal of the port of Galena, this 22d day of September, in the year one thousand eight hundred and sixty-six.

[SEAL.] DANIEL WANN,
Surveyor of Customs.

53

CUSTOM-HOUSE,
Galena, December 16th, 1868.

I hereby certify that the within is a true copy of the enrollment of barge Trout, which is of record in this office.

In testimony whereof I have hereunto set my hand and affixed the seal of my office the day above written.

[SEAL.] DANIEL WANN,
Surveyor of Customs.

(Indorsed:) Copy No. 14. Enrolment of barge Trout. Burthen $83\frac{69}{100}$ tons. Issued at the port of Galena the 22nd Sept., 1866.

54 *Enrollment.*

Form C.] [No.

Inrollment in conformity to an act of the Congress of the United States of America, entitled "An act for enrolling and licensing ships or vessels to be employed in the coasting trade and fisheries, and for regulating the same," approved February 18, 1793; and of "An act to regulate the admeasurement of tonnage of ships and vessels of the United States," approved May 6, 1864.

No. 15. Permanent. Where surrendered, Galena, Illinois.

Henry C. Short, of Savanna, Illinois, having taken or subscribed the oath required by the said acts, and having sworn that he is attorney of the "Western Union Railroad Company," whereof Geo. A. Thomson is president and W'm V. Baker secretary; and that said company are sole owners

of the ship or vessel called the Widgeon, of Savanna, whereof Benjamin Bradford is at present master, and, as hath been sworn, is a citizen of the United States, and that the said ship or vessel was built at Winona, Wis., in the year 1864, as appears by her certificate of enrollment No. 10, dated and issued at this office the 16th Aug't, 1865, and now surrendered on change of name of said company. And the said certificate of enrollment having certified that the said ship or vessel has one deck and no masts, and that her length is one hundred and twenty-four $\frac{6}{10}$ feet, her breadth twenty $\frac{5}{10}$ feet, her depth four $\frac{8}{10}$ feet, and that she measures ninety-seven tons and three hundredths, viz:

Date of surrender, 12th day of March, 1867.

	Tons.	100ths.
Capacity under tonnage-deck	97	03
Capacity between decks above tonnage-deck	"	
Capacity of inclosures on upper deck, viz	"	
Total tonnage	97	03

Cause of surrender, owners changed. An act of the Congress of the United States.

And that she is a barge-boat, has no cabin on deck, and plain head.

And the said Henry C. Short having agreed to the description and admeasurement above specified, and sufficient security having been given in accordance to the said acts, the said barge-boat has been duly enrolled at the port of Galena.

Given under my hand and seal of the port of Galena, this 22nd day of September, in the year one thousand eight hundred and sixty-six.

[SEAL.] DANIEL WANN,
Surveyor of Customs.

55 CUSTOM-HOUSE,
Galena, December 16th, 1868.

I hereby certify that the within is a true copy of the enrollment of the barge Widgeon, which is of record in this office.

In testimony whereof I have hereunto set my hand and affixed the seal of my office the day above written.

[SEAL.] DANIEL WANN,
Surveyor of Customs.

(Indorsed:) Copy No. 15. Enrollment of barge Widgeon. Burthen $97\frac{3}{100}$ tons. Issued at the port of Galena the 22nd of September, 1866.

56 (Copy.)

Open for endorsement.

Underwriters' policy.

Cargo.

No. 922.]

By this policy of insurance The Germania Fire Insurance Company, The Hanover Fire Insurance Company, The Niagara Fire Insurance Company, & The Republic Fire Insurance Company, all of the city of New York, each acting and contracting for itself, and not one for the other or others, in consideration of one-fourth part of the respective sums to be

specified as premiums, and endorsed hereon, do each insure How and Balch, of Shakopee, Minn., for account of the respective persons hereinafter referred to as entitled to the benefits of this policy, to the amount of one-fourth part of the respective sums which, within the limits hereinafter mentioned, shall be endorsed upon this policy by being specified in the column headed "amount insured," in the book attached hereto, at and from such ports or places, to such ports or places, and upon such lawful goods, wares, and merchandise, laden or to be laden upon such good vessel or vessels, boat or boats, or railroad cars or carriages, and to be carried and conveyed in such manner, and by such routes as shall also be endorsed upon this policy, by being specified in the respective columns arranged for that purpose in the book attached hereto, and also specified in the certificates hereinafter mentioned. It being understood and agreed that no sum greater in the aggregate than twenty thousand dollars shall be insured under this policy upon any one risk, and it being further understood that the insurance hereby made shall be for the benefit of the respective persons only whose names shall be written in the columns arranged for that purpose in the book attached hereto, and to whom a certificate, authenticated by the general agent of the said insurance companies, specifying the name of such person, the amount of such insurance, the premium therefor, the goods insured, and from and to what places, and by what routes, signed by the said How and Balch, shall be issued and delivered by him simultaneously with the endorsement of the risk upon this policy, and at the time when he shall agree to permit such person to come in under this policy. And it being further understood that no risk shall be considered as insured under this policy until the same shall be made binding by such endorsement and the issuing of such certificate as aforesaid, and the sound value at the place of destination of all goods insured under this policy shall not in any case be deemed to exceed the purchasing price at the port or place of lading more than ten per cent.

Beginning the adventure upon the said property from and immediately following the lading thereof at the port or place above named, and so shall continue and endure until the same shall arrive and be landed at the port or place of destination.

Touching the adventures and perils which the said insurance companies are contented to bear and take upon themselves respectively, they are of the sea, lakes, rivers, canals, railroads, fires, jettisons, and all other perils and misfortunes that have or shall come to the hurt, detriment, or damage of the said property, or any part thereof. And in case of any loss or misfortune it shall be lawful and necessary to and for the assured, or insurers, their respective agents, factors, servants, and assigns, to sue, labor, and travel for, in, and about the defense, safeguard, and recovery of the said goods and merchandise, or any part thereof, without prejudice to the insurance hereby made; nor shall the acts of the insured or insurers in recovering, saving, and preserving the property insured, in case of disaster, be considered a waiver or an acceptance of abandonment, nor as affirming or denying any liability under this policy; but such acts shall be considered as done for the benefit of all concerned, without prejudice to the rights of either party. To the charges whereof the said companies will contribute in such proportion as the sum herein insured by each of them bears to the whole value of the property so insured. Moneys and bullion, promissory notes, and other evidences of debt, books of account, written securities, deeds, or other evidences of title to property of any kind are not covered by this policy, unless expressly defined as so insured.

And in case of loss, such loss to be paid in thirty days after proof of loss and proof of interest in said property shall be furnished to the general agent of the said companies. Provided always, and it is hereby further agreed, that if the said assured shall have made any other insurance upon the property aforesaid, prior in date to this policy, then the said insurance companies shall each be answerable only for so much of the amount insured by each as the amount of such prior insurance may be deficient towards fully covering the property hereby insured; and the said insurance companies shall return the premium upon so much of the sum by them respectively insured as they shall respectively be by such prior insurance exonerated from. And, in case of any insurance upon the said property subsequent in date to this policy, the said insurance companies shall nevertheless be respectively answerable for the full extent of the sum by each of them subscribed hereto, without right to claim contribution from such subsequent insurers, and shall accordingly be entitled to retain the premium by them respectively received in the same manner as if no such subsequent insurance had been made. And in case of loss or damage to property hereby insured, the said companies, or their agent or representative at or nearest the first port of discharge, shall have prompt notice of the same, and shall have every opportunity and facility for ascertaining the cause, extent, and amount of damage by personal inspection, appraisal, or sale of the damaged property. It is also agreed that the property be, and it hereby is, warranted by the assured free from any charge, damage, or loss which may arise in consequence of a seizure or detention for or on account of any illicit or prohibited trade, or any trade in articles contraband of war. It is furthermore hereby expressly provided that no suit or action against the said companies, or either of them, for the recovery of any claim for loss or damage upon, under, or by virtue of this policy shall be sustained in any court of law or equity, unless such suit or action shall be commenced within the term of twelve months next after the loss or damage shall occur; and in case any such suit or action shall be commenced after the expiration of twelve months next after such loss or damage shall have occurred, the lapse of time shall be taken and deemed as conclusive evidence and a conclusive defence against the validity of the claim thereby so attempted to be enforced.

It it is also agreed and understood that, in case of loss or damage under this policy, the assured, in accepting payment therefor, hereby and by that act assigns and transfers all his or their right to claim for loss or damage as against the carrier, or other person or persons, to said companies respectively, to enure to their benefit respectively, however, to the extent only of the amount of the loss and damage and attendant expenses of recovery paid or incurred by the said companies respectively; and any act of the assured waiving or transferring or tending to defeat or decrease any such claim against the carrier, or such other person or persons, whether before or after the insurance was made under this policy, shall be a cancellation of the liability of these companies respectively for or on account of the risk incurred for which loss is claimed. And it is understood and agreed that these companies, or their agent, shall have free access at all reasonable hours to the books, accounts, instructions, and correspondence of the assured containing statements of or which relate to shipments and receipts covered by this policy.

Deck cargoes. It is understood that property covered by this policy on sea or lake vessels shall be "under deck," unless otherwise specified in writing upon this policy, and charged for additionally; and such "deck

cargoes," when insured, are insured against total loss of packages only; the minimum rates of such loss, to make a claim, shall be ten per cent., except salt, which shall be twenty per cent., of the whole number of packages insured "on deck;" and, in all cases, "on-deck" risks to be free from damage by wet, breakage, leakage, or exposure.

Warranted by the insured free from damage or injury from dampness or frost, heating, sweating, steaming, change of flavor, or being spotted, discolored, musty, or mouldy, and to be free from liability for leakage on molasses or other liquids, except caused by actual water-contact with the article damaged, occasioned by the perils of navigation.

Warranted by the assured free from any claim for loss or damage arising from seizure, detention, or the consequences of any hostile act of the United States Government, and also from any loss or damage from piracy, or letter of marque, or the acts of any government hostile to the United States, or arising from or in consequence of any hostile, warlike, predatory or belligerent act whatever.

This policy shall continue in operation so long as (and no longer than) the person named in it shall be the agent of these insurance companies at the place mentioned in it, unless it should be sooner cancelled by the companies, and they reserve to themselves the right to cancel it at their option at any time. After any such cancellation, or the termination of such agency, the agent shall, on demand, deliver up this policy and the blank certificates thereto belonging, to these companies, or to their authorized agent, and no additional amount shall be insured under it, and all further use of it shall be void and of no effect; but such cancellation or such termination of the agency shall not affect or impair any then outstanding insurances which shall have been previously made under it and in pursuance of its terms.

Memorandum. It is also agreed that salt, water-lime, cement, plaster, tobacco, hemp, sumac, pleasure-carriages, household-furniture, and looking-glasses are warranted free from average under twenty per cent., unless general. Bundle, rod, hoop, and sheet iron, wire, broom-corn, wicker and willow ware, corn-meal, buckwheat flour, fruits, cheese, oil-cake, dry fish, vegetables and roots, skins, dry hides, musical instruments, soap, ashes, cotton, stoves and hollow-ware, tin-plate, steel, sugar, flax and flax-seed, free from average under ten per cent., unless general. Grain free from average under five per cent., unless general; and no partial loss or particular average shall in any case be paid unless amounting to five per cent.

It is further understood and agreed, by and between the parties hereto, that nothing herein contained shall be construed as creating or importing any joint liability on the part of the above-named companies, or either of them, but that each of the said companies shall be regarded as only severally liable upon this policy for the amount insured by each under the same, in the same manner, and not otherwise, as if each had issued its separate policy for the proportionate amount which each insures as above mentioned. And if any additional amount shall be endorsed upon this policy it is to be with the understanding that the said companies each become insurers for one-fourth only of such additional amount. It is further understood that the taker or holder of this policy shall not, nor shall any person insured by the same, participate in the profits of either of the said companies.

In witness whereof the said companies have respectively caused these presents to be signed by their respective presidents, and attested by

their respective secretaries, in the city of New York, the 23d day of August, 1865.

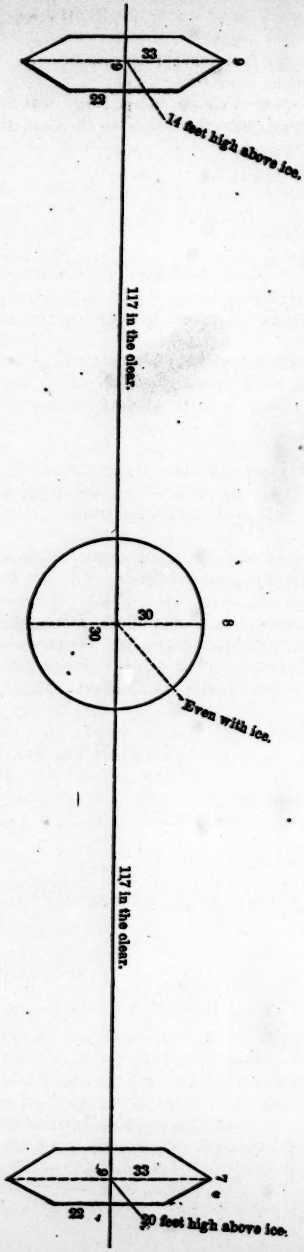
RIC'D GERRIGUE, *President.*	*Of the Germania Ins. Co.*
JOHN EDW. KAHL, *Secretary.*	
B. S. WALCOTT, *President.*	*Of the Hanover Ins. Co.*
I. REMSEN LANE, *Secretary.*	
JONATHAN D. STEELE, *President.*	*Of the Niagara Ins. Co.*
P. NOTMAN, *Secretary.*	
ROB'T J. HONE, *President.*	*Of the Republic Ins. Co.*
D. F. CURRY, *Secretary.*	

(Red-ink lines crossed over the above names in the original.)

Countersigned by the general agent of the above-named companies, at New York, this 23d day of August, 1865.

(Signed) A. STODDART, *Gen'l Agent.*

57


33
9
22
14 feet high above ice.
117 in the clear.
30
30
Even with ice.
117 in the clear.
33
9
22
20 feet high above ice.

58 SAINT PAUL, *Aug. 6th*, 1867.

E. MARINER,
Att'y-at-law:

SIR: In reply to you' note of Aug. 3d, I have to say that the diagram was made from actual survey made on the ice, and the distance, 117 feet is in the clear.

Truly yours,

S. T. FOLSOM, *C. E.*

Filed June 12, 1869.

59 RESPONDENT'S TESTIMONY.

District court of the United States for the district of Wisconsin.

THE GERMANIA INSURANCE COMPANY, The Niagara Insurance Company, The Hanover Insurance Company, & The Republic Insurance Company
vs.
THE STEAMBOAT LADY PIKE, HER ENGINES, boilers, machinery, boats, tackle, apparel, & furniture, & against the barge Salmon.

You are hereby notified that the depositions of Louis Metmiller, Jerry Persinger, Sale Engart, and others, will be taken on behalf of the respondents in above cause at the office Lincoln, Smith & Warnock, in the city of Cincinnati, in the State of Ohio, before W. Hayden Edwards, esq'r., commissioner, commencing on Wednesday, the thirteenth day of February inst., at ten o'clock in the forenoon, and continue from day to day until said depositions are taken. And you are further notified to be present.

Yours, &c.,

FINCHES, LYNDE & MILLER,
Proctors for Respondent.

To E. MARINER, Esq'r.,
Proctor for Libellants,

MILWAUKEE, *Feb'y.* 6, 1867.

Due service of within notice admitted Feb. 7, 1867.

E. MARINER,
Proctor for Libellants.

UNITED STATES OF AMERICA,
State of Ohio, Hamilton County, ss:

Be it remembered that on this 13th, 14, 15, 16, 18th days of Feb'y, A. D. 1867, before, me W. Hayden Edwards, a notary public within and for the county and State aforesaid, duly appointed, qualified, and commissioned, and acting as such, and duly authorized under and by virtue of the laws of the United States to take depositions to be used in the courts of the United States, personally appeared at the office of Lincoln,
60 Smith & Warnock, in Cincinnati, county and State aforesaid, Mr. F. Davidson, P. S. Davidson, S. Enyard, A. C. Monfort, J. Parsinger, Louis Miltmiller, C. W. Fisher, & Alex. M. Grant, each of sound mind

and lawful age, witnesses on behalf of the respondents in a certain cause pending in the district court of the United States for the district of Wisconsin, wherein The Germania Insurance Company, The Niagara Insurance Company, The Hanover Insurance Company, & The Republic Insurance Company, are libellants, and the steamboat Lady Pike, her engines, boilers, machinery, boats, tackle, apparel, & furniture, & against the barge Salmon, are respondents.

UNITED STATES OF AMERICA,
State of Ohio, Hamilton County, ss:

Be it remembered that on this 13th, 14th, 15th, 16th, & 18th days of Feb'y, A. D. 1867, before me, W. Hayden Edwards, a notary public within and for the county & State aforesaid, duly appointed, qualified, and commissioned, and acting as such, and duly authorized under and by virtue of the laws of the United States to take depositions to be used in the courts of the United States, personally appeared at the office of Lincoln, Smith & Warnock, in Cincinnati, county & State aforesaid, Mr. Mr. F. Davidson, P. S. Davidson, S. Enyard, A. C. Monfort, J. Parsinger, Louis Miltmiller, C. W. Fisher, Alex. M. Grant, each of sound mind and lawful age, witnesses on behalf of the respondents in a certain cause pending in the district court of the United States for the district of Wisconsin, wherein The Germania Insurance Company, The Niagara Insurance Company, The Hanover Insurance Company, & The Republic Insurance Company are libellants, and The Steamboat Lady Pike, her engines, boilers, machinery, boats, tackle, apparel, & furniture, and against the barge Salmon, are respondents.

Deposition of W. F. Davidson.

And the said W. F. DAVIDSON, being by me first carefully examined, cautioned, and sworn to testify the truth, the whole truth, and nothing but the truth, deposes and says:

Quest 1st. State your age, your residence, & your occupation, and how long you have followed.

61 Ans. 1st. I am 42 years of age; S't Paul, Minnesota, is my residence; capt. of steamboats and owner is my occupation. I have followed it between twenty and thirty years.

Ques. 2nd. State whether or not you are familiar with the navigation of the Upper Mississippi and Minnesota Rivers; and, if so, how long you have been familiar with it, and whether or not you are acquainted with the usual mode of navigating between the piers of the upper end of S't Paul's in 1866. I refer to the piers of the Central Railroad. I mean the navigation by the prudent and competent captains and pilots acquainted with that river?

Ans. 2nd. I am acquainted with the navigation of said rivers. I have been acquainted with said navigation for over ten years, and had a large number of boats engaged in it. I was acquainted with the usual mode, of navigating between the piers of the upper end of S't Paul's in the year 1866.

Ques. 3rd. State what was the usual mode when they had barges, in tow of passing through the piers.

Ans. I know of no other mode than towing them through at the usual speed; this has been the custom since the bridge was built. I know of no other mode being practiced by steamboat men.

Ques. 4th. What has been the general usage of navigators with the usual number of barges, say from two to three, in going through narrow

places, where there is room enough and some to spare, and the water is deep enough to tow them through, since barge navigation was known on the river in connection with steamboats. I speak of prudent and competent pilots and captains.

Ans. 4th. To tow them through.

Ques. 5th. How long has it been usual or customary to use barges for the carriage of freight, the same towed by steamers?

Ans. 5th. To my knowledge it has been the usual mode for ten years, and was informed that it was the mode before I went there.

Quest. 6th. Do you know Alex. M. Grant as a pilot on the Upper Mississippi River; and, if so, what was his standing as a com-
62 petent, prudent, and skillful pilot in the year 1866, on that river?

Ans. 6th. I know him and have known him for several years. He is considered a good and competent pilot.

Cross-examination:

Quest. 1st. You say it is customary to tow these barges through at the usual speed. What speed is that?

Ans. 1st. You can't get at that for all boats, as different boats have different speed.

Ques. 2nd. Do you mean the usual speed of the boats running in the open river?

Ans. 2nd. Yes. At the usual speed of the boat we have better command of the boat, & we can steer better.

Ques. 3rd. What is the usual speed of the class of boats to which the Pike belongs?

Ans. 3rd. I couldn't give a correct answer. I should judge she was about a seven-mile boat. Towing would reduce that speed. She is not a fast boat nor a slow boat. She runs at a medium rate. She would be a seven-mile boat going up stream; going down stream it would be increased about 2 miles.

Ques. 4th. Do you know how fast the current is at these piers?

Ans. 4. I do not; I should judge it was three miles or more. I speak in reference to the river being high.

Ques. 5th. How wide is the channel between the piers there?

Ans. 5th. I can't state that with certainty. It is between one and two hundred feet, I think.

Ques 6th. Do you know whether or not they are set with the current?

Ans. 6th. The shore-pier is with the current, for it sets on the shore. The intention was to set them all with the current; but they are not so exactly.

Quest. 7th. How many piers are there in the river?

Ans. 7th. There is as many as three. There may be more. It is a wide part of the river.

Quest. 8th. Do you run between the shore-pier and the next one ordinarily, or between two piers standing in the river?

63 Ans. 8th. The centre pier is in the best water. The boats run between the two highest piers. The best water is between those piers; that is the channel.

Quest. 9th. Isn't there a channel on both sides of the centre pier?

Ans. 9th. There is water on both sides of the centre pier, but it is usual to run between the two highest piers.

Ques. 10th. How long are the two highest piers?

Ans. 10th. I should judge 30 feet.

Ques. 11th. How much do the two highest stand out of line with the current?

Ans. 11th. I can't state that with certainty.

Ques. 12th. How near can you get to it?

Ans. 12th. I couldn't tell that, but know it is not in the exact line with the current.

Ques. 13. Does the lower end of it stand a fourth of the length of the pier across the current?

Ans. 13. I can't state with certainty, but would judge not; shouldn't think it stood that much.

Ques. 14. Are the high piers parallel?

Ans. 14. I don't know that they are exactly, but should judge they was.

Ques. 15. Toward which shore does the current set there?

Ans. 15. To the right-hand shore coming down stream.

W'M F. DAVIDSON.

Deposition of P. S. Davidson.

And the said P. S. DAVIDSON, being by me first carefully examined, cautioned, and sworn to testify the truth, the whole truth, & nothing but the truth, deposes and says:

Quest. 1st. State your age, your residence, & occupation, & how long you have followed it.

Ans. 1st. I am thirty-nine years of age; La Crosse, Wisconsin, is my residence; I am a steamboat man; I have followed it for twenty years.

Ques. 2nd. State whether or not you are familiar with the navigation of the Upper Mississippi and Minnesota Rivers; and if so, how long you have been familiar with it, and whether or not you are acquainted with the usual mode of navigating between the piers of the upper end
64 of St. Paul in the year 1866. I refer to the piers of the Central railroad. I mean the navigation by the prudent and competent captains and pilots acquainted with that river.

Ans. 2nd. I am acquainted with the navigation of said rivers. I have been acquainted with said navigation 8 or 9 years. I was acquainted with the usual mode of navigating between the piers of the upper end of St. Paul's, in the year 1866.

Ques. 3rd. State what was the usual mode when they had barges in tow, of passing through the piers.

Ans. 3rd. Towing them through.

Ques. 4th. What has been the general usage of navigators with the usual number of barges, say from two to three, in going through narrow places when there is room enough and some to spare, and the water is deep enough to tow them through, since barge navigation was known on the river, in connection with steamboats. I speak of prudent and competent pilots and captains.

Ans. 4th. To tow them through.

Ques. 5th. How long has it been usual or customary to use barges for the carriage of freight, the same towed by steamers?

Ans. 5. It has been customary to tow barges for the purpose of carrying freight ever since I knew anything about the river.

Ques. 6th. Do you know Alex. W. Grant as a pilot on the Upper Mississippi River; and, if so, what was his standing as a competent, prudent, and skillful pilot in the year 1866, on that river?

Ans. 6th. I know him, and always considered him a good pilot.

Cross-examination.

Ques. 1st. What other way is there of getting through except towing through?

Ans. 1st. They run small barges down from Minnesota River with oars—row them through.

Ques. 2nd. Steamers don't do that, do they?

Ans. 2nd. No, sir.

65 Ques. 3rd. What other way is there of steamers getting them through besides towing them through?

Ans. 3rd. They have never adopted any other way to my knowledge except towing them through.

P. S. DAVIDSON.

Deposition of S. Enyard.

And the said S. ENYARD, being by me first carefully examined, cautioned, and sworn to testify the truth, the whole truth, and nothing but the truth, deposes and says:

Ques. 1st. State your age, your residence, and your occupation, and how long you have followed it.

Ans. 1st. I am 51 years of age; Cincinnati is my residence; steamboating is my occupation. I have followed it over 30 years.

Quest. 2nd. Have you been captain of steamboats, and, if so, how long; and whether or not you were captain of steamers—boats on Upper Mississippi; and, if so, how long?

Ans. 2d. I have been ten or twelve years; cannot state exactly how long. I run a boat there one season, most of the season.

Ques. 3rd. Were you on board the steamer Lady Pike when she struck a barge against the pier of a bridge at the upper end of St. Paul, in the spring of 1866; if so, where were you at the time?

Ans. 3rd. I was, and was on the roof, out forward; was acting captain at the time.

Quest. 4th. Please state the facts in relation to it; and what, if anything caused the barge to strike the pier, and what became of the barge and also of the wheat that was contained therein.

Ans. 4th. There might have been two or three causes. One was a gust of wind came up just as we were about a length or less from the pier. I look at this as the principal cause. I don't know anything else that caused it. We were running along at the usual speed. We attempted to get the barge on to a second bank below the pier, and got it partly on. We left it there; we could do no more with it. I never saw the wheat afterwards or the barge. Captain Monfort attended to

66 the matter. After striking we got a tarpaulin down and placed it over the hole & endeavored to save the barge. While the mate & the men were doing this, myself and the pilot were working the barge up to the bank where we landed it.

Ques. 5th. In what way did this gust of wind strike your boat, and against which pier did she drift her, and how was she built as to cabin; which barge was it that was struck, the larboard or starboard?

Ans. 5th. The wind came nearly square across the river. There was a row of piers there, and it struck the larboard barge and sunk her. The wind blew towards St. Paul, and drifted us in that direction.

Ques. 6th. What was the first notice you had that there was any danger or peril to your barge from any cause?

Ans. 6th. When the wind struck the boat we were to' close to back out; we were within a length or less than a length of the piers.

Ques. 7th. How did the wind come up as to suddenness, and state whether or not you had had any wind since you left Fort Snelling that affected in any way the running of your boat?

Ans. 7th. We had had several little gusts that day that had bothered us some; we had some wind up at the other bridge that bothered us some, but this looked all plain sailing, and would have been if it had have been entirely calm. This gust that struck us came up suddenly. We had had no wind that affected the running of the boat after leaving the other bridge.

Ques. 8th. Where is the other bridge that you speak of, and do you know what the width of the span between the piers of the other bridge is?

Ans. 8th. It is directly below the mouth, or right at the mouth, of the Minnesota River. I should call it across the mouth of the Minnesota River; it is probably six miles above the bridge where the accident happened.

Ques. 9th. Please state how your boat was built as to cabin.

Ans. 9th. She had a full cabin. She was a stern-wheel boat.

67 Ques. 10th. What, if any, passengers or load had you aboard the boat itself?

Ans. 10th. We had nothing aboard the boat that I recollect; we hadn't a pound of freight and we hadn't a passenger; we had just the three barges.

Ques. 11th. How much was your boat and your barges drawing at that time? State as near as you can.

Ans. 11th. The barges were drawing near four feet; the boat was drawing about two feet.

Ques. 12. Who was at the wheel at the time?

Ans. 12. Both of the pilots were at the wheel. Alex. W. Grant and the other's name was Looney. I don't remember his christian name.

Ques. 13. How was your boat manned and equipped at the time?

Ans. 13th. She was fully manned & and well equipped at the time.

Ques. 14. State how she was as to being in complete running trim, in what order was her machinery, and whether or not the various officers were at their posts at the time.

Ans. 14. Her machinery was in good order, and everybody was at their posts.

Ques. 15. From what point was this trip engaged, and state whether the barges were with the boat at the time?

Ans. 15. The trip was engaged on our up trip to St. Paul; the barges were with us; we took them up from Savannah.

Ques. 16. You stated, in answer to question number 4, that there might have been two or three causes which caused the boat to strike piers; please explain yourself, and state whether or not there was any other cause, except this gust of wind, that you know of.

Ans. 16. That is the only cause that I know of; I didn't intend that that should have gone down; I didn't mean that there was any other cause.

Ques. 17. How far are these piers above the bridge that crosses at the town.

Ans. 17. I should say a mile and a half or two miles.

Ques. 18. About what speed were you making, according to your best judgment, when you struck the pier?

Ans. 18. I should think about six or seven miles per hour.

Ques. 19. What is the best condition of a boat as to speed for

68 holding her in position when passing a pier or obstruction in the river.

Ans. 19. She is in the best condition when running at her ordinary speed to hold her in position and steer her; you can't steer her and hold her in position, unless she has head-way on.

Ques. 20. What time in the day was this accident?

Ans. 20. About the middle of the afternoon.

Ques. 21. What time did you leave Shakopee, and how far above St. Paul is Shakopee?

Ans. 21. It is called fifty miles from St. Paul to Shakopee; we left there early in the morning; very early.

Ques. 22. Who loaded these barges?

Ans. 22. The shipper.

Ques. 23. Was there more than one shipper, or did he load all?

Ans. 23. One man loaded them all.

Ques. 24. State whether or not he went up with you from the place where the contract was made if all the way; if not, how far.

Ans. 24. He went up to St. Paul with us; then from there home by rail, to get his shoots & things ready for loading.

Ques. 25. State in what manner he loaded it aboard.

Ans. 25. His warehouses were on the bank; we run the barges up alongside; he loaded the grain in by means of shoots.

Ques. 26. What was the character and condition of the barges at the time the wheat was loaded into them, and until the accident happened?

Ans. 26. They were considered in good order for business.

Ques. 27. Were they not tight, strong, and staunch and dry up to the time of this accident?

Ans. 27. Yes.

Ques. 28. Were they steamboat barges built for being towed, or were they built for being rowed and handled with oars?

Ans. 28. They were built for steamboat barges for carrying grain in bulk; sealed inside and built in three or four compartments; they were built to be towed and not to be handled in any way.

69 Ques. 29. State whether in your opinion there would have been any accident to this barge, except for this sudden gust of wind that struck the boat as you have stated. How high is your cabin above the water, and how long is your boat?

Ans. 29. I think there would not; I should think about 21 feet; she is about 155 feet in length.

Cross-examination:

Ques. 1st. What time did you get to Shakopee going up from St. Paul, and how long did you remain there?

Ans. 1st. I think we got there just before night, and laid there two nights and one day.

Ques. 2nd. From whose warehouse did you take this grain?

Ans. 2nd. I don't know.

Ques. 3rd. Who is the man that contracted with you to carry the wheat?

Ans. 3rd. There was no contract made with me; it was made with Capt. Monfort.

Ques. 4th. How many barges did you have, and how large were they?

Ans. 4th. I had three barges; they were twenty or twenty-one feet wide; something over a hundred feet in length.

Ques. 5. Were they all of about the same size?

Ans. 5. Yes, sir; as far as I know.

Ques. 6. What was the beam of your boat?
Ans. 6. About 31 or 32 feet.
Ques. 7. Including guards, how much?
Ans. 7. I should judge about 37 or 38 feet.
Ques. 8. What time did you leave Shakopee?
Ans. 8. Early in the morning.
Ques. 9. How many landings did you make?
Ans. 9. Once for wood.
Ques. 10. Where?
Ans. 10. In the Minnesota River; I can't tell just where.
Ques. 11. What was the power of your engines?
Ans. 11. About 16-inch cylinder and five-feet stroke, I think.
Ques. 12. Arn't they fourteen-inch cylinders?
Ans. 12. I have just said I thought they were 16; it is all guess-work with me. I never measured them.
70 Ques. 13. Is the boat a side or stern wheel boat?
Ans. 13. Stern-wheel boat.
Ques. 14. You say she has plenty of power; how fast can she run up street & what is her ordinary speed from Savannah to St. Paul without barges?
Ans. 14. We never went up without barges.
Ques. 15. Have you ever ran on her anywhere else?
Ans. 15. No.
Ques. 16. What is her ordinary speed fairly loaded against a two-mile current?
Ans. 16. Seven miles an hour or over.
Ques. 17. In the same current with it, what would by the speed?
Ans. 17. I suppose ten miles an hour; it depends upon the depth of the water.
Ques. 18. What kind of a day was it the day you left Shakopee; did you have any trouble in getting down, and how was the water?
Ans. 18. It was a pleasant day; we had no particular trouble in getting down; the river was high; the banks full.
Ques. 19. Ten or twelve feet deep?
Ans. 19. I don't know.
Ques. 20. How was the Mississippi; was she high; was there 8 feet?
Ans. 20. I don't know.
Ques. 21. Which handles better, a stern or side wheel boat?
Ans. 21. A side-wheel boat; though the stern wheel boats do all the towing.
Ques. 22. Did it rain any that day?
Ans. 22. I think not; I don't think it rained; I know if it did I was out in it; I was on the roof all day.
Ques. 23. Which way was the wind?
Ans. 23. I don't know the points of the compass; don't know whether it was north, south, east, or west.
Ques. 24. Was it blowing steadily all day?
Ans. 24. No, sir.
Ques. 25. What time did it commence blowing?
Ans. 25. I can't say what time; we had little gusts of wind
71 going out the Minnesota; at some points the wind was favorable, at others it would cause us some trouble.
Ques. 26. How much wheat had you on the three barges?
Ans. 26. About 20,000 bushels.
Ques. 27. Where did the wind bother you?
Ans. 27. In the Minnesota River.

Ques. 28. Did it bother you all the way down the Minnesota River; did it bother you in the morning?

Ans. 28th. It didn't bother us all the way down; it only bothered us at different times.

Ques. 29. Did the wind cause you to run aground one or more times coming down?

Ans. 29. No, sir; there was too much water.

Ques. 30. What kind of a place is it there at the upper bridge to get through?

(Obj. to.)

Ans. 30. It is like all railroad-bridges—a nuisance.

Ques. 31. How wide are the piers?

(Obj. to.)

Ans. 31. I don't know.

Ques. 32. About how wide?

(Obj. to.)

Ans. 32. I should judge they were about 85 feet wide; I mean the upper.

Ques. 33. How long are the piers up and down stream?

(Obj. to.)

Ans. 33. I should take them to be about 170 or 180 feet, that is, the draw-pier, the full length of it. The other pier, I should say, twenty-five to thirty.

Ques. 34. Had you any trouble getting through there?

(Obj. to.)

Ans. 34. Yes; we blowed around there, and broke a rudder.

Ques. 35. Whereabouts did you break it?

(Obj. to.)

Ans. 35. We broke it nearly off from the hull.

Ques. 36. Did you break the wood-work or the iron-work?

(Obj. to.)

Ans. 36. Just the wood-work.

Ques. 37. Did you repair it then?

(Obj. to.)

Ans. 37. We did.

Ques. 38. How far is it between the bridge and the bridge-piers where the accident happened?

(Obj. to.)

Ans. 38. I guess it was five or six miles.

Ques. 39. Are the piers of the upper bridge right with the current?

(Obj. to.)

72 Ans. 39. I don't recollect.

Ques. 40. I have forgotten whether you said the wind blew steadily all day.

Ans. 40. I said it did not.

Adjourned until to-morrow, the 14th, between same hours.

W. HAYDEN EDWARDS, *N. P.*

Ques. 41. How was the weather that day?

Ans. 41. Pleasant, to the best of my recollection.

Ques. 42. Who was the man that made the contract for carrying the grain?

Ans. 42. I don't know, sir.

Ques. 43. Were all the barges fully laden?

Ans. 43. They were.

Ques. 44. Do you know how much there was on board the barge Salmon?

Ans. 44. I do not.

Ques. 45. How were the barges attached to the vessel; in what position?

Ans. 45. They were all abreast; the sunken one was on the outside—on the larboard side.

Ques. 46. What barge, or which one of the barges, was between it and the boat?

Ans. 46. I don't recollect.

Ques. 47. Do you recollect which was the larger barge, the Trout or the Widgeon?

Ans. 47. The Widgeon was said to be the largest barge.

Ques. 48. How high would the deck of the barge come above the guard of the steamer, when the barges were loaded?

Ans. 48. When the barges are loaded and the steamer light, they come about even.

Ques. 49. Did the wind bother you in the morning when you started?

Ans. 49. A little.

Ques. 50. How long?

Ans. 50. Well, a few minutes in getting the boat around to make our start; say fifteen or twenty minutes.

Ques. 51. Did it bother you through the day, so that you had to back up to make crossings?

Ans. 51. Didn't make any crossings.

Ques. 52. How is the Minnesota River, an easy stream to run,
73 or a hard one? How does it compare with the Upper Mississippi?

Ans. 52. A portion of it was pretty hard. As far as we went it was. Farther up I can't state. It is a creek compared with the Upper Mississippi. About half the distance up the river, which we ran, was wide; the other portion of it was narrow and crooked. The crooked part is the hard part.

Ques. 53. Were you obliged to back up any in consequence of the wind during the day in the Minnesota River?

Ans. 53. We backed up several times on account of the wind and crooked river.

Ques. 54. Where you had the fair sailing, that is a fair river and a reasonable straight channel, was there wind enough to prevent you going right along at any time during the day?

Ans. 54. There was not.

Ques. 55. What time did you leave Shakopee; about what hour in the morning, as near as you can recollect?

Ans. 55. About seven o'clock; it might have been eight.

Ques. 56. What part of the rudder did you damage at the upper bridge; what part did you break?

Ans. 56. The blade.

Ques. 57. Did you split the post?

Ans. 57. No, sir.

Ques. 58. How did you repair it?

Ans. 58. By spiking on pieces of plank.

Ques. 59. Did that leave it as handy as it was before?

Ans. 59. It did.

Ques. 60. How is the river at and about the piers where the collision was, crooked or straight? I mean the banks of the river.

Ans. 60. Tolerably straight.

Ques. 61. How was the course of the current; towards which bank did it set at the piers?

Ans. 61. I do not know; didn't take notice.
Ques. 62. How fast is the current at the piers?
Ans. 62. I don't know that, either.
Ques. 63. Well, isn't it pretty swift?
74 Ans. 63. I don't know; what I might call swift another man would not.
Ques. 64. Well, wasn't it 4 or 5 miles an hour?
Ans. 64. I shouldn't think it was over three.
Ques. 65. Is the current straight with the piers there?
Ans. 65. I don't know; I didn't take notice.
Ques. 66. Which side of the boat were you at the time you entered the piers?
Ans 66. Very nearly the centre.
Ques. 67. Whose watch was it as pilot while you were going down there?
Ans. 67. I don't know; they were both at the wheel.
Ques. 68. Do you know where they live?
Ans. 68. I believe Grant lives in S't Louis, and Looney lives at a little town about three or four miles from La Crosse, in Minnesota.
Ques. 69. You were acting as captain at the time, you say. Where was the captain, off the boat?
Ans. 69. No, sir; I was the running captain, or Capt. Monfort run the office. He was kind of lame at the time; and I always was the sailing captain.
Ques. 70. What orders did you give as to the sailing of the boat after the wind struck her, just before entering these piers?
Ans. 70. I gave none. It would have been useless at that time.
Ques. 71. What did the pilots do?
Ans. 71. They done the best they could, to try to get her through without hitting. They gave her all the wheel to prevent her from hitting.
Ques. 72. Which way did they put the wheel?
Ans. 72. They put the wheel towards the starboard. I suppose that's their business.
Ques. 73. How much damage did it do to the barge, and what?
Ans. 73. The barge sunk. I was on the roof and couldn't see. When we got ashore, or on the bank, it was sunk so that I couldn't see the damage.
Ques. 74. Did it hit the pier pretty hard?
Ans. 74. About enough to sink it. I don't know how hard we did hit it. We just rubbed against it. I don't know how hard we did hit it. It sunk. This is all I know about it.
75 Ques. 75. Did you feel the jar or the blow on the steamer where you stood?
Ans. 75. I felt a little jam or jar, or shake of the boat. I felt the steamboat jar, which was occasioned by this.
Ques. 76. Which piers are the widest, the upper or the lower?
Ans. 76. The lower.
Ques. 77. What difference?
Ans. 77. I would suppose forty to fifty feet.
Ques. 78. How much room would you have required to have gone through clear?
Ans. 78. There was plenty of room if we had hit the centre; I should think forty feet to spare!
Ques. 79. You don t understand me. How much room would it have required, as you did run, to have gone clear?

Ans. 79. Had we been five or six feet more to the starboard we would have missed the pier.

Ques. 80. Did the wind strike you square broadside?

Ans. 80. Nearly so.

Ques. 81. Was it forward or aft your beam?

Ans. 81. It struck the whole boat. It came aft a little; that is, it came a little down the river.

Ques. 82. What part of the barge was damaged?

Ans. 82. I don't know.

Ques. 83. What part of the barge hit the bridge first?

Ans. 83. A little forward of midships.

Ques. 84. Don't the current set strongly over to the larboard pier there?

Ans. 84. I don't know; think it is pretty near straight.

Ques. 85. Did the barge hit the upper corner of the pier, or the broadside of it?

Ans. 85. The barge hit nearly broadside, a little on the lower corner.

Ques. 86. How do stern-wheel boats handle in a wind compared with side-wheel?

Ans. 86. Do not handle so well as side-wheel boats.

Ques. 87. Ar'n't they very much harder to handle?

Ans. 87. Some are. There is a great difference in handling
76 stern-wheel boats as well as side-wheel boats, but, as a rule, side-wheel boats handle much more readily in a wind than stern-wheel boats.

Ques. 88. Was there anything in the sky that would indicate a sudden puff of wind just then?

Ans. 88. There was not, that I noticed.

Ques. 89. How hard did the wind blow. Was it a regular gale, or was it a sort of an April-shower puff?

Ans. 89. Well, just a little puff of wind; we had several of them that day.

Ques. 90. How much room was there to spare between the starboard pier and the starboard barge?

Ans. 90. I should think forty or fifty feet.

Ques. 91. Was the Mississippi River high?

Answer 91. Tolerably high.

Ques. 92. High as the Minnesota?

Ans. 92. Minnesota couldn't have been so high, unless the Mississippi was up.

Ques. 93. W*as* the banks full?

Ans. 93. I don't know whether it was the highest we have; it was a big river.

Ques. 94. How long had both pilots been in the pilot-house before it struck?

Ans. 94. I don't know of either of them being out from the time we left Shakopee.

Ques. 95. How far was it when you ran the barge on to the bank, below the pier?

Ans. 95. About half or three-quarters of a mile.

Ques. 96. How far above the St. Paul bridge, the city bridge?

Ans. 96. I should think a mile & a half.

Ques. 97. Were the engines of the Pike in good order?

Ans. 97. They were as far as I know; we had two good engineers.

Ques. 98. How fast could she take those three barges down stream in a good river?

Ans. 98. About ten miles an hour.

Ques. 99. How fast could she have taken them in Lake Pepin?

Ans. 99. Well, six or seven miles an hour.

77 Ques. 100. Do you mean with crowding, or at an ordinary gate?

Ans. 100. I mean when it is calm. I mean at the ordinary speed; to make ten miles in the river we would have to have a good current.

Ques. 101. Do you know what it would cost to repair that barge?

Ans. 101. I do not know.

Ques. 102. Did you hold up any just before you went into the piers?

Ans. 102. No, sir.

Ques. 103. Who trimmed the grain in the barges as it ran in from the shoots while they were being loaded?

Ans. 103. The mate, with the boat's men.

Re-examined:

Quest. 1st. On which side of the boat was the Widgeon?

Ans. 1st. I don't recollect positively. I think she was upon the starboard.

Ques. 2. Where was the rudder injured, at the upper bridge or above it, and, if so, how far above?

Ans. 2. Above it, near a half mile.

Ques. 3. State whether or not it was repaired before you went through the upper bridge, & whether or not the superstructure was upon the piers, so as to confine you to the draw of that bridge.

Ans. It was repaired before we went through; it was.

Ques. 4th. How many rudders had you on the Pike, & how many were injured?

Ans. 5. We had four; one was injured.

Ques. 5. Which one was it?

Ans. 5. The larboard outside rudder.

Ques. 6. How was it injured, if not against the bridge-piers?

Ans. 6. Against the bank.

Ques. 7. Was the boat or barges in any way injured in going through the upper bridge, & which is the widest, the draw that you went through at the upper bridge, or the passage that you went through where the accident happened?

Ans. 7. They were not injured; it is the widest where the accident happened.

78 Ques. 8. How much?

Ans. 8. I should suppose thirty or forty feet.

Ques. 9. You say in your cross-examination that the wind which struck your boat at the time of the accident was just a little puff, or some such word. What do you mean by that?

Ans. 9. I mean a little squall, not a regular long gale.

Ques. 10. You say in passing that the pilot attempted to prevent the striking the pier by putting his wheel to the starboard; what effect would that have?

Ans. 10. It would draw the boat off from the pier.

Ques. 11. Before the wind struck her, was she not entering the piers so as to go fairly through them?

Ans. 11. She was.

Ques. 12. You say the mate & your men distributed the grain in the barges as it came in through the shoots; how was it distributed as to trimming the barges properly?

Ans. 12. It was done by shovels and distributed right; the barges were in proper trim.

Recross-examined:

Ques. 1st. Did you make more than one effort to go through the upper bridge?

Ans. 1st. But one.

Ques. 2. How far above the bridge was it that you backed up; I refer to the upper bridge?

Ans. 2. About a half mile.

Ques. 3. How came you to back up, and what did you do?

Ans. 3. We backed up to get into position to run through the draw.

Ques 4. How far did you back?

Ans. 4. I don't know that, she backed up a length. While backing up she struck the shore and broke a rudder; we put out an anchor and held her there, & repaired it.

Ques. 5. How did it happen that you got out of position there; did the wind strike you?

(Obj. to incompetent.)

Ans. 5 We had landed there; it was the wind that caused us to get against the bank when we started.

79 Re-re-examined:

Ques. 1st. From the place where the rudder was injured to the bridge, how is the channel, straight or crooked?

Ans. 1st. Nearly straight; from there down there was a bend just above where we landed.

S. ENYART.

Deposition of A. C. Monfort.

A. C. MONFORT, being by me first carefully examined, cautioned, and sworn to testify the truth, the whole truth, & nothing but the truth, deposes & says:

Examination-in-chief:

Ques. 1st. State your age, residence, and occupation, and how long and where you have followed it.

Ans. 1st. I am 52 years of age. Cincinnati, O., is my residence; my occupation is capt. & clerk of steamboat. I have followed it for thirty years on the Ohio & Mississippi Rivers, and their tributaries.

Ques. 2. To what extent have you run on the Upper Mississippi?

Ans. 2. About eleven years; from S't Louis to S't Paul, and to Fort Snelling, and from Galena to Fort Snelling.

Ques. 3. On what class of boats, and how much as captain?

Ans. 3. On the regular class of steamers navigating that river; about two years as captain, the rest as clerk.

Ques. 4. What connection had you with the Lady Pike on the trip last spring, when the barge Salmon was sunk when passing through the piers of the central railroad bridge, just at the upper end of S't Paul?

Ans. 4. I was acting as capt. & clerk.

Ques. 5. Did you make the bargain for the shipment of the wheat in barges; if so, with whom and where was it made?

Ans. 5. I made the contract with a man whose name is unknown to me at present, at Reed's Landing, at the foot of Lake Pepin. Mr. T. J. Duffy was there at the time, and went up with us to S't Paul. It was for the shipment of wheat in bulk in barges.

Ques. 6. State where the barges were at the time you made the con-

tract, and whether or not the party that made the contract saw them.

80 Ans. 6. The barges were laying alongside of the boat, and the contract was made for the wheat to go in the barges exclusively, in bulk. The party saw them that made the contract.

Ques. 7. State what the condition of the barges were at the time the wheat was loaded into the barges, and also when the contract was made.

Ans. 7. The barges were inspected & enrolled by the surveyor of Dubuque, and were in first-rate condition.

Ques. 8. Were they *are* not in such a condition when the barge struck the piers?

Ans. 8. They were in a good condition.

Ques. 9. What was the character of these barges; that is, were they made for the purpose of being towed altogether, or were they made so that they could be rowed & floated?

Ans. 9. They were built for towing exclusively, and had no means of being floated.

Ques. 10. Were the barges open and visible to the parties when said contract was made, so that the condition of the barges in this respect was known to them?

Ans. 10. The barges were visible, & he knew the condition of them in this respect.

Ques. 11. How was the wheat loaded in the barges?

Ans. 11. By waggons or carts wheeled out on a platform, and dumped into a slide that led into the barges. This was done by the shippers' hands, and the hands of the boat distributed it into its proper place in the barges.

Ques. 12. What time did you leave Shakopee, & what time did you arrive at the place where the accident happened?

Ans. 12. We left Shakopee just after sunrise. We arrived at the place where the accident occurred about the middle of the afternoon.

Ques. 13. Where were you at the time the accident occurred?

Ans. 13. I was on the barge Salmon.

Ques. 14. Will you state how the accident occurred, and what caused it?

Ans. 14. It was caused by a sudden gust of wind blowing the boat towards the pier. I don't know any other cause for it.

81 Ques. 15. How was the boat pointed, & entering these piers before the wind struck her; & would there or not have been any difficulty had there not have been any wind?

Ans. 15. She was coming directly down the river, and was steered so as to miss the piers; and would have done so had the wind not have blown her towards the piers.

Ques. 16. Which pier was struck, the larboard or starboard; and where was your barge injured, and how?

Ans. 16. The barge on the larboard side struck the pier about midships and stove the side in.

Ques. 17. How much was it injured?

Ans. 17. The side of it was stove in about 3 feet each way.

What became of it and the wheat?

Ans. 17. The barge was shoved upon the bank, and instructions left with the railroad agent to save the wheat. We towed the barge ashore.

Ques. 18. Had you had any wind that affected the running of your boat since leaving the bridge at the fort, until this gust struck you at the piers?

Ans. 18. None that was perceptible.

Ques. 19. Was there any notice of a wind of that kind from the clouds before entering the piers; did you anticipate anything of the kind?

Ans. 19. There was none at that time. We didn't anticipate anything of the kind at that time.

Ques. 20. About what speed were you making at the time; and state whether or not you were running at the ordinary speed with such a load, and at that stage of water?

Ans. 20. About seven miles an hour; that was the ordinary speed at that stage of the river with that load.

Ques. 21. What was the best condition of the boat as to speed, while running slow or at her ordinary speed, in order that she might be handled most easily & held in position most certain?

Ans. 21. The boat would steer best at her ordinary speed.

Ques. 22. Who were on watch at the time, & state whether they were at their proper places, posts?

82 Ans. 22. All the officers and crew were at their posts at the time, or at their proper places.

Ques. 23. How was the boat manned and equipped?

Ans. 23. Fully manned & equip'ed.

Ques. 24. What was the condition of the boat's machinery, and her running order, & also her steering-apparatus, before & as she entered or approached the piers?

Ans. 24. Her machinery & steering-apparatus were all in good condition.

Quest. 25. Who was at the wheel of your boat at the time?

Ans. 25. Both pilots were in the pilot-house—Mr. Grand & Mr. Looney.

Ques. 26. What was their standing & reputation as pilots, & their capacity, &c.?

Ans. 26. They are both regular licensed pilots, & their reputation as pilots was good.

Ques. 27. State as to their competency & ability as pilots, in your judgment?

Ans. 27. In my judgment, they are first-class pilots. I don't want no better.

Ques. 28. Had you any other barges except those received under the contract made at Reed's Landing?

Ans. 28. We had no other freight except those in the barges referred to, & no other barges.

Quest. 29. Could any portion of that wheat have been taken on the boat in bulk; and was she in a condition to take wheat in the bulk?

Ans. 29. The contract was made to carry the wheat on the barges in bulk exclusively, and could not have been carried on the boat in bulk, as she was not sealed. The boats on the western rivers are never sealed; and wheat is never carried in bulk upon them, but always in sacks & packages. The barges were sealed, and made exclusively for carrying grain in bulk.

Ques. 30. What is the difference between the price for carrying wheat from Shakopee to Chicago, if any, supposing in the one

83 case the same was to be carried in bulk & towed as you carried this, & the other carried in sacks & packages upon the boat, and handled as packages should be?

(Obj. to.)

Ans. 30. I suppose from eight to ten cents per bushel; that is, it

would be less in bulk & more in sacks. I mean the price that the carrier would receive.

Ques. 31. What else does the shipper save besides, in the money paid to the carrier for carrying it?

Ans. 31. He saves the labor, and the use of sacks.

Ques. 32. How long has it been customary & usual for carrying grain in bulk in barges by towing them by steamers upon the Upper Mississippi, as you were doing there?

Ans. 32. To the best of my knowledge, three or four years.

Ques. 33. Did it not commence with the raising of elevators on the banks of the river; and was not that as early as the year 1861?

Ans. 33. It may have done so; I don't know of my own knowledge.

Ques. 34. How long since the towing of barges in connection with steamers has been known on those rivers?

Ans. 34. About 15 years.

Ques. 35. At the time of the boat and barges were passing through or between the piers, what chance had you to back out, or to have done any better than you did do?

Ans. 35. It was impossible to have done any better than we did do; it was impossible to have backed out.

Ques. 36. State what, if any, want of care or skill there was in the management of the boat while approaching the piers & in passing between them.

Ans. 36. The boat was fully manned & skillfully handled, and it was impossible to have avoided the accident; it was one of those unforeseen accidents which are impossible to avoid. There wasn't any want of care upon the part of any officers upon the boat, nor was there any negligence upon the part of any.

Ques. 37. What is the usual way of passing through these piers when you have barges in tow?

84 Ans. 37. The usual way is to tow them through *through* those piers.

Ques. 38. How long have you been familiar with the usages and practice of boating on the Upper Mississippi?

Ans. 38. Since the year 1844.

Cross-examination:

1. Ques. (39.) Who had the charge of the sailing of the steamer that trip?

1. Ans. (39.) The boat was under my charge; but being lame, I employed Capt. Enyard to stand my watch for me, and manage the boat while under way.

2. Ques. (40.) How much grain was there on the three barges?

2. Ans. (40.) I contracted to bring out twenty thousand bushels. I think there was a little less than twenty thousand bushels.

3. Ques. (41.) Was 6,753.25 the number of bushels shipped in the Salmon?

3. Ans. (41.) It is my impression that that is the am'nt.

4. Ques. (42.) How many were on the Widgeon, & how many on the Trout?

4. Ans. (42.) ——

Ques. 43. (5.) How much more could they have carried; that is, were they all fully laden?

Ans. 43. (5.) No, sir; the barge Trout could have carried two thousand bushels more.

6. Ques. (44.) How were they fastened to the vessel, & on which side?

Ans. 18. None that was perceptible.

Ques. 19. Was there any notice of a wind of that kind from the clouds before entering the piers; did you anticipate anything of the kind?

Ans. 19. There was none at that time. We didn't anticipate anything of the kind at that time.

Ques. 20. About what speed were you making at the time; and state whether or not you were running at the ordinary speed with such a load, and at that stage of water?

Ans. 20. About seven miles an hour; that was the ordinary speed at that stage of the river with that load.

Ques. 21. What was the best condition of the boat as to speed, while running slow or at her ordinary speed, in order that she might be handled most easily & held in position most certain?

Ans. 21. The boat would steer best at her ordinary speed.

Ques. 22. Who were on watch at the time, & state whether they were at their proper places, posts?

82 Ans. 22. All the officers and crew were at their posts at the time, or at their proper places.

Ques. 23. How was the boat manned and equipped?

Ans. 23. Fully manned & equip'ed.

Ques. 24. What was the condition of the boat's machinery, and her running order, & also her steering-apparatus, before & as she entered or approached the piers?

Ans. 24. Her machinery & steering-apparatus were all in good condition.

Quest. 25. Who was at the wheel of your boat at the time?

Ans. 25. Both pilots were in the pilot-house—Mr. Grand & Mr. Looney.

Ques. 26. What was their standing & reputation as pilots, & their capacity, &c.?

Ans. 26. They are both regular licensed pilots, & their reputation as pilots was good.

Ques. 27. State as to their competency & ability as pilots, in your judgment?

Ans. 27. In my judgment, they are first-class pilots. I don't want no better.

Ques. 28. Had you any other barges except those received under the contract made at Reed's Landing?

Ans. 28. We had no other freight except those in the barges referred to, & no other barges.

Quest. 29. Could any portion of that wheat have been taken on the boat in bulk; and was she in a condition to take wheat in the bulk?

Ans. 29. The contract was made to carry the wheat on the barges in bulk exclusively, and could not have been carried on the boat in bulk, as she was not sealed. The boats on the western rivers are never sealed; and wheat is never carried in bulk upon them, but always in sacks & packages. The barges were sealed, and made exclusively for carrying grain in bulk.

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Ques. 43. (5.) How much more could they have carried; that is, were they all fully laden?

Ans. 43. (5.) No, sir; the barge Trout could have carried two thousand bushels more.

6. Ques. (44.) How were they fastened to the vessel, & on which side?

6. Ans. (44.) The barge Widgeon, being the heaviest loaded and the biggest barge, was lashed to the starboard side, the barges Trout & Salmon on the larboard side.

7. Ques. (45.) How far above the piers were you when the wind struck the vessel, just before the collision?

7. Ans. (45.) We were right directly opposite them. I was on the barge Salmon, and I was certain that they would miss them.

8. Ques. (46.) How was the water?

8. Ans. (46.) The river was unusually high; it was over the banks.

9. Ques. (47.) Towards which bank of the river does the current set there?

85 9. Ans. (47.) At that stage of the river it set upon the S't Paul side.

10. Ques. (48.) How many times had you been through those piers up to that time?

10. Ans. (48.) That was my first trip through them.

11. Ques. 49. Do you know whether the piers were parallel with the current?

11. Ans. (49.) I think they are.

12. Ques. (50.) How long are they?

12. Ans. (50.) I should judge about 15 feet; may be twenty.

13. Ques. (51.) Had you been troubled before with the wind that day?

13. Ans. (51.) The wind was squally in the morning. We had had some trouble with the wind in the Minnesota River.

14. Ques. (52.) How was the weather, pleasant, bright, or cloudy?

14. Ans. (52.) It was a clear, pleasant day; scudding clouds.

15. Ques. (53.) How did the wind strike you—square broadside?

15. Ans. (53.) It struck her on the stern and blowed her stern around, quartering down the river.

16. Ques. (54.) What prevented the wind from striking her on the bow, too?

16. Ans. (54.) The wind didn't come in that direction; the barge being forward, the wind had not so much effect upon the forward part of the boat.

17. Ques. (53.) Which way did the wind blow her stern, to the larboard or starboard?

17. Ans. (55.) To the larboard.

18. Ques. (56.) Which way would that swing her stern?

18. Ans. (56.) To the starboard.

19. Ques. (57.) Which side did she strike?

19. Ans. (57.) The larboard.

20. Ques. (58.) How far aft the stern of the vessel was the point of collision?

20. Ans. (58.) About sixty feet aft of the stern of the boat.

21. Ques. (59.) How long was the boat?

21. Ans. (59.) One hundred sixty feet, & the wheel 20 feet; which makes 180 feet.

22. Ques. (60.) How long was the barge?

22. Ans. (60.) About 120 feet.

86 23. Ques. (61.) What is the beam of the barge?

23. Ans. (61.) 20 feet.

24. Ques. (62.) What is the beam of the boat over all?

24. Ans. (62.) 38 feet.

25. Ques. (63.) You say the wind made the boat go quartering down the river; towards which shore would that make her stern go?

25. Ans. (63.) To the larboard, or S't Paul side of the river.

26. Ques. (64.) How much more space would you have required to have gone clear on the larboard?

26. Ans. (64.) I think it would have taken ten or fifteen feet more space to have avoided the pier.

27. Ques. (65.) Did the barge strike more than once?

27. Ans. (65.) She only struck once.

28. Ques. (66.) Did she bound off, or rake along?

28. Ans. (66.) Bound off.

29. Ques. (67.) Which corner of the pier did she strike, upper or lower?

29. Ans. (67.) Upper.

30. Ques. (68.) How hard did she strike?

30. Ans. (68.) Quite hard; sufficient to start her deck-beams.

31. Ques. (69.) It tore them right loose, didn't it?

31. Ans. (69.) It drove them in.

32. Ques. (70.) Didn't it drive them through the other side?

32. Ans. (70.) Not to my knowledge.

33. Ques. (71.) How many streaks of plank did it break?

33. Ans. (71.) I think three on the side. The main leak was on deck.

34. Ques. (72.) How many deck-planks did it break?

34. Ans. (72.) Three.

35. Ques. It crushed them, did it?

35. Ans. Yes, sir.

36. Ques. How heavy are deck-plank; what is their thickness & width?

36. Ans. Two inches thick and six wide.

37. Ques. What was the size of the side-plank?

37. Ans. They were an inch and a half thick and six inches wide; there was a plank shear running around the deck on the outside
87 at the top, which was two & a half inches thick and six inches wide, I think.

38. Ques. Was there a hole broken right through the side, or were her planks only slivered?

38. Ans. The plank on the side were broken in, and the plank on the top only split & slivered.

39. Ques. Broken in so as to make a clear hole?

39. Ans. Yes, sir. The only knowledge I have of this is what I saw of the barge afterwards. I was on the barge at the time, but she went down, and we couldn't see the damage.

40. Ques. What planks were broken, the three upper?

41. Ans. Yes, the upper ones.

42. Ques. How soon did she sink?

43. Ans. From twenty minutes to half an hour.

44. Ques. How much room was there between the Widgeon & the starboard pier?

44. Ans. I should think thirty or forty feet; the Widgeon was on the starboard side.

45. Ques. How many piers are there standing in the channel in the main river?

45. Ans. I do not know exactly. I think four.

46. Ques. Between which piers did you run?

46. Ans. Between the two middle ones, I think.

47. Ques. The two highest?

47. Ans. I think so.

48. Ques. How long did that wind last?

48. Ans. I do not know. I didn't pay any attention to it after the barge struck the pier.

49. Ques. From which direction had the wind been blowing during the day?

49. Ans. From the west, mostly.

50. Ques. What other direction than the west?

50. Ans. I can't state.

51. Ques. Did the wind blow in any other direction than from the west?

51. Ans. I couldn't tell. It blew in all directions when it did blow; the river is crooked, and it struck us in all quarters.

88 52. Ques. From what direction did the wind blow other than the west?

52. Ans. I do not recollect.

53. Ques. Do you recollect that it blew in from any other direction than the west?

53. Ans. I do not.

54. Ques. How hard did it blow when it struck you?

54. Ans. It was a sudden squall, quite sudden, & not sever'ly hard.

Ques. 55. Did it do any other damage than this?

Ans. 56. Not to my knowledge.

Ques. 57. Did it blow hard enough to interfere with you at any other time?

Ans. 57. No; I think not.

Ques. 58. Have you never attributed this loss to the situation of those piers?

(Obj. to.)

Ans. 58. If the piers had not been there the loss would not have occurred. The piers was the cause of the loss.

Ques. 59. Did you not, while at S't Paul, directly after the loss, state that the loss was occasioned by the piers?

(Obj. to as incompetent.)

Ans. 59. Not to my recollection.

Ques. 60. What did you state there was the cause of the loss?

(Obj. to.)

Ans. 60. The wind blowing the barge against the piers was the cause of the loss, & I made no other statement that I recollect of.

Ques. 61. Did you make a protest at S't Paul?

Ans. 61. Yes, sir.

Ques. 62. Did you state in that anything about being driven on to the piers by the wind?

(Obj. to as incompetent.)

Ans. 62. I do not recollect. I think I did.

Ques. 63. In what situation were the engines of that boat on that day?

Ans. 63. In good working order.

Ques. 64. Hadn't they been strained so that they had to be tinkered at constantly?

89 Ans. 64. They had not; they were managed by a very competent engineer.

Ques. 65. Didn't it require the engineer to work at them all the time, so that you could go at all?

Ans. 65. It did not require any more work than engines of that class, & they are first-class engines; & it did not require the engineer to work at them at all. I had the best engineer on that boat that was on the western waters.

Ques. 66. How much speed could you get out of those engines in Lake Pepin with an ordinary load, without crowding them, with three loaded barges & vessel light?

Ans. 66. I should think about six miles an hour in Lake Pepin.

Ques. 67. Do you mean that you could do that without driving those engines faster than a prudent man would?

Ans. 67. The engines are under the control of the engineer, licensed by the Government. I have nothing to do with driving them. I think she could go six miles an hour without driving the engines any.

Ques. 68. How long could she keep up that *gate*, I mean last spring, with her engines as they were when the accident happened?

Ans. 68. All day and all night if she staid in Lake Pepin, As long as she staid in Lake Pepin she could keep up that *gate*.

Ques. 69. How fast could she go with the current as the water was that day?

Ans. 69. Ten miles an hour with those three barges. She could tow them down stream easily at that stage of the river.

Ques. 70. Without crowding?

Ans. 70. Yes, sir.

Ques. 71. Was the same engineer that was on her with you, on her in September?

Ans. 71. No, sir; he left her in May.

Ques. 72. How much water were those barges drawing?

Ans. 72. About four feet.

Ques. 73. More or less?

Ans. 73. The Widgeon was drawing four feet large; the others
90 four feet less, probably.

Adjourned until to-morrow between same hours.

Adjourned from the 14th to the 15th inst.

W. HAYDEN EDWARDS, *N. P.*

Re-examined:

Ques. 1. Where did this gust of wind you speak of come from?

Ans. 1. There is bluffs on each side of the river; there is an opening or "cooley," as they call them, where the railroad enters, and the wind came from that direction.

Ques. 2. You say at high water the current sets towards the S't Paul shore; how is it when the water is low?

Aus. 2. When the current or river is confined within its banks, I presume the current is straight; but at that stage of the river, the bottoms were overflowed & the current set across the bottom & towards the bluff quite strong.

Ques. 3rd. You speak of scudding clouds in the day-time; is that common or otherwise in that section of the country in the spring of the year?

Ans. 3. It is a very common thing in the spring of the year; almost a daily occurrence.

Ques. 4. When you left Shakopee were or not the barges lashed to the boat in the same position as when you passed the piers?

Ans. 4. They *was*; we could tow them no other way when the boat was light.

Ques. 5. You say that you know nothing about the breaks in the barge except what you saw afterwards. How long afterwards was it when you saw it?

Ans. 5. Some two months, while on the way to Savannah.

Ques. 6. Then you do not know of your own knowledge that there

was a clean hole broken into the barge, or the planks only mashed in?

Ans. 6. I do not.

Ques. 7. Where was the Lady Pike built, & for what trade, & how much boiler-power had she?

Ans. 7. She was built at Cincinnati, O., & for the Cincinnati & Memphis trade. She had two boilers, 46 inch' in diametre, 26 feet
91 long, 5 flues each. I should suppose 13-inch flues; 16-inch cylinders, & five-foot stroke.

Ques. 8. How did she compare in power with the class of boats running up the Minnesota, or navigating those rivers, and how does she compare in power?

Ans. 8. Larger than the usual class of boats running on the Minnesota River, and equal to those in power running on the Mississippi.

Ques. 9. What was the price of wheat at Shakopee at that time; and, if you were informed by the shipper, to what extent it was insured, and what he said about it?

Ans. 9. The shipper told me he was paying from 80 to 90 cents per bushel, and that the wheat on those barges was insured for $1.00 per bushel.

Ques. 10. Have you any interest in the event of this suit in any way, or interest in the boat?

Ans. 10. I have none.

Re-cross-examined.

Ques. 1st. Which is the S't Paul side as you come down; the larboard or the starboard?

Ans. 1st. The larboard side.

Ques. 2nd. How far was the point of collision from the stern of the barge?

Ans. 2nd. About sixty feet, or half way.

Ques. 3. How far aft the stern of the boat?

Ans. 3. About sixty feet.

Ques. 4. How was that boat for speed, for her size, among stern-wheel boats?

Ans. 4. She was as fast as the boats of her class & power.

Ques. 5. Did you hold up any before you went in between the piers, or did you go at your usual speed?

Ans. 5. We had poor fuel, and was going at a moderate speed, but did not hold up any.

Ques. 6. Do you suppose it was a squall that struck you, or was it the prevailing wind of that day, sucking down through the valley?

Ans. 6. It was a squall that struck us.

92 Ques. 7. Did it come from the same direction as the wind had come?

Ans. 7. It did.

Ques. 8. What did it cost to repair that barge, & who did repair it?

Ans. 8. It was repaired by the owners of the barge, at Savannah. I have never seen the bill of the cost of repair.

Ques. 9. Has it been paid by the owners of the boat to the company?

(Objected to.)

Ans. 9. It has never been paid.

Ques. 10. How fast could your boat tow a raft 100 feet front, drawing two feet water, in Lake Pepin?

(Obj. to.)

Ans. 10. About four miles an hour, I guess.

A. C. MONFORT.

Deposition of J. Pursinger.

And the said J. PURSINGER, being by me first carefully examined, cautioned, and sworn to testify the truth, the whole truth, & nothing but the truth, deposes and says:

Examination-in-chief:

Ques. 1st. State your age, residence, & occupation, & how long and where have you followed it?

Ans. 1. I am 33 years old; Hamilton County, Ohio; Storrs township; steamboating. I have followed it sixteen years, on the Ohio & Mississippi Rivers. I have been on the Upper Mississippi for about six years.

Ques. 2. Were you on board the steamer Lady Pike when the barge Salmon was injured against the pier; and, if so, acting in what capacity?

Ans. 2. I was on her; I was mate.

Ques. 3. Did you witness the accident; and, if so, what caused it, how did it happen, and could it have been avoided?

Ans. 3. I saw the accident. A gust of wind came up just as we were entering the piers, & caused it to strike the pier of the bridge. It could not have been avoided.

Ques. 4. Which side of the boat did it (the pier) strike, and where were you standing at the time of the accident?

93 Ans. 4. It struck the larboard side; I was standing on the starboard side. The wind struck the starboard side of the boat. I was standing aft; me and my men were taking in the slack of the line.

Ques. 5. Had you had any wind that affected the running of your boat after leaving the fort; had you or not?

Ans. 5. None that would affect the running of the boat.

Ques. 6. About what time in the afternoon did you pass through the piers?

Ans. 6. Between three & four o'clock.

Ques. 7. Who were on watch at the time; and were they or not at their posts & attending to their duties?

Ans. 7. We were all on watch. The captain was on the hurricane-roof, and I was on deck. We were at our posts, and attending to our duties. I was on the main deck, which is the lower deck.

Ques. 9. Was there or not any mode by which you could have avoided the accident after the wind struck you?

Ans. 9. I don't think there was.

Ques. 10. Was there any negligence upon the part of any of the officers or crew of the boat, so far as you know, that led to this accident; or was it attributed to this wind, so far as you know?

Ans. 10. There was not any negligence, so far as I know; it was attributed to the wind.

Ques. 11. How was your boat manned & equipped at the time, & what was the condition of her machinery at the time you undertook to pass the piers?

Ans. 11. She was well equipped and a full crew; her machinery was in good condition, & steering-apparatus was also in good condition.

Ques. 12. At about what speed was she running when she entered the piers?

Ans. 12. About seven mile' an hour.

Ques. 13. Was that or not her ordinary speed with such a cargo; I mean usual speed?

Ans. 13. It was her usual speed.

Ques. 14. How were the barges towed, what was their position, and was that or not the ordinary mode of towing them when the boat was light?

94 Ans. 14. One on the starboard side and two on the larboard; they were abreast of one another; that was the ordinary mode of towing them when the boat was light, for her.

Ques. 15. State where this wheat was loaded & how, & what time you left Shakopee. Where did you take your barges from, and *was* you present when the contract was made?

Ans. 15. It was loaded at Shakopee; it was run out on a platform; run into a shoot, and run from there into the barge. We left Shakopee about six o'clock in the morning. We took the barges up with us from Savannah. I was not present when the contract was made.

Ques. 16. How *was* the barges loaded, as to being in trim, when you started?

Ans. 16. They was loaded in good trim. I trimmed the barges. The grain was run into them by the shippers, and me & my men trimmed them.

Ques. 17. What became of the barge & the wheat, & the other barges & wheat?

Ans. 17. I don't know what became of the one that was sunk; I never saw it afterwards. We landed the others at the elevator at Savannah.

Ques. 18. What was done with the sunken barge?

Ans. 18. We left it in charge of some railroad agent; I don't remember his name. The capt. attended to this; I never saw it after we sunk it.

Cross-examination:

Ques. 1. How many times did you land coming down the Minnesota River?

Ans. 1. We landed once, for wood.

Ques. 2. Whereabouts; half way down?

Ans. 2. I don't know the name of the place; it was not half way down; it was about eight o'clock, to get wood.

Ques. 3. Didn't you land again just above the bridge?

Ans. 3. We landed again just above the bridge.

Ques. 4. What sort of a day was it?

Ans. 4. It was a clear day, a very pleasant day.

95 Ques. 5. Any wind?

Ans. 5. We had a little wind at that time. Sometimes there was some, then again there wasn't any. It came up in little squalls, I mean, coming down the Minnesota River.

Ques. 6. What do you mean by squall?

Ans. 6. Well, there comes up a sudden wind, and then dies down again.

Ques. 7. Well, were these squalls violent?

Ans. 7. No, sir; they *wasn't*.

Ques. 8. Were they so as to annoy you in navigating your boat?

Ans. 8. They *was* not until we got down to the first bridge; they *wasn't* before that.

Ques. 9. Whereabouts were you when the wind struck you, just above the piers or just entering them; and, if above, how far above?

Ans. 9. We were about entering the piers when the wind struck us?

Ques. 10. Weren't you above the piers?

Ans. 10. I don't think we *was*.

Ques. 11. Whereabouts on the barge did it strike the pier?

Ans. 11. About one-third back on the larboard side.

Ques. 12. Did you see it strike?

Ans. 12. I did not.

Ques. 13. Did you feel it?

Ans. 13. I did.

Ques. 14. How far astern were you on the steamer?

Ans. 14. Right forward of her engines.

Ques. 15. Did you see the starboard pier, & was it forward or aft or abreast of you when the barge struck?

Ans. 15. I did. It was just right forward of me.

Ques. 16. How far forward?

Ans. 16. Well, it was about fifty yards.

Ques. 17. How far was it from the boat?

Ans. 17. I don't know how far it was. I conldn't tell. About fifty feet. A person couldn't tell. I was at work.

Ques. 18. Did the wind do any other damage to the boat?

Ans. 18. It did not.

Ques. 19. Which way did it come from?

Ans. 19. Well, I don't know.

Ques. 20. Did it come the same way it came all day?

96 Ans. 20. Sometimes it would blow one way, sometimes another.

Ques. 21. Did it car*ine* your boat any, that you remember?

Ans. 21. None that I remember.

Ques. 22. How fast was the current then?

Ans. 22. I do not know.

Ques. 23. When you say that the boat was going seven miles an hour, do you make any allowance for the current; and, if so, how much?

Ans. 23. Yes, you would have to make an allowance for the current. Well, I don't know how much allowance I make for the current.

Ques. 24. How rapidly will the engines, at the speed they were going, have driven the boat, with her load, in Lake Pepin?

Ans. 84. I do not know. A man can't tell how much they would make.

Ques. 25. About how much would they make supposing it was calm?

Ans. 25. From four to five miles with such a load, or loaded as she was.

Ques. 26. Wouldn't she go seven miles per hour if it was calm?

Ans. 26. I don't know.

Ques. 27. How long does it take to stop a boat with barges in tow going down, by backing up as hard as you can?

Ans. 27. That is another hard thing to answer. It is owing to how the current is.

Ques. 28. In a three-mile current.

Ans. 28. I suppose, with a good head of steam, it would take about three minutes.

Ques. 29. What line was it the slack of which you were taking up?

Ans. 29. The starboard stern-line.

Ques. 30. What was it fast to?

Ans. 30. Fast to the starboard barge and the boat; the Widgeon.

Ques. 31. How did it happen that it slacked, then?

Ans. 31. Stretching of the tow-line.

his
J. + PURSINGER.
mark.

Witness: W. H. EDWARDS.

97 *Further dep'n of A. C. Monfort.*

A. C. MONFORT recalled by consent, and testifies as follows:

Ques. 1. What is the usual way of towing barges loaded in the way those were when the boat is light?

Ans. 1. Abreast. We could not handle the boat with them unless they were abreast. If they were ahead the boat must be loaded. We tried it several times afterwards, & could tow them in no other way.

Ques. 2. What, if anything, did you do to notify the shipper of this accident?

Ans. 2. On my arrival at St. Paul, I notified the shipper at Shakopee by telegraph of the sinking of the barge, and for him to notify the underwriters; we left the barge in charge of the agent of the Western Union Railroad, for him to do the best with the wheat and save the barge, if possible.

Recross-examined:

Ques. 1. Who did you notify, Capt., Mr. Duffy or Mr. Anderson?

Ans. 1. I notified Mr. Duffy.

Ques. 2. Who was it that told you about the price of grain and the insurance, Mr. Duffy or Mr. Anderson?

Ans. 2. Mr. Dufty.

Ques. 3. Are you sure whether he gave you the price you have mentioned as the market rate at that time, or the price he had paid for the wheat?

Ans. 3. The market rate at that time. I saw them unloading teams at the time at the door, and asked him the price. I saw him buying the wheat.

Ques. 4. With whom did you make the contract you have mentioned to go up and get the wheat?

Ans. 4. I am not positive as to his name. I think it was Anderson. He was going to Chicago, & Duffy was going up with us.

Ques. 5. Was that contract with Mr. Anderson, or whoever it was, in writing?

Ans. 5. No, sir; it was verbal.

Ques. 6. Who did you understand owned the grain from them, Mr. Anderson or Mr. Duffy?

Ans. 6. They did not tell me who owned it.

98 Re-examined:

Question 1. At the time you entered into this verbal contract you speak of, was the price and the taking of it in bulk in barges agreed upon; & state whether or not you went up for it according to that agreement, & at what prices?

Ans. 1. I went up to Shakopee exclusively for that purpose, and the price agreed upon was twenty cents per bushel to Chicago.

Recross-examined:

Ques. 1. Was the Western Union Railroad Company, with whose agent you left the wheat, the company which was to do the land transportation of the grain?

Ans. 1. It was to go over the Western Union Railroad line to the junction; thence to Chicago to the northwestern elevators.

A. C. MONFORT.

Deposition of Louis Mettmiller.

And the said LOUIS METTMILLER, being by me first carefully examined, cautioned, and sworn to testify the truth, the whole truth, and nothing but the truth, deposes and says:

Examination-in-chief:

Ques. 1. State your age, residence, & occupation, & how long & where have you followed it?

Ans. 1. My age is 30 years. Newport, K'y, is my residence. I am a carpenter. I have followed it about 15 years. I followed it about half of that time in this State, at Chil'icothe, and followed it here about seven years. All the time since May, 1866, I have been in Cincinnati. I have been a river carpenter, but have made Cincinnati my home. I have run on almost all western rivers; the Ohio & Upper and Lower Mississippi both.

Ques. 2. Were you aboard the steamboat Lady Pike in April, 1866, when the barge Salmon struck the piers just at the upper end of St. Paul; and, if so, where were you at the time, and did you feel the shock?

99 Ans. 2. I was aboard her. I was in the engine-room at the time. I felt the jar. It was not very heavy.

Ques. 3. What was the condition of the boat as to her equippment, & how was she manned, & what was the condition of her steering-apparatus & machinery at the time she passed the pier?

Ans. 3. She was well equipped and well manned; her steering-apparatus was all in good order and her machinery was all in good working order.

Ques. 3. What do you know as to the rudder being injured at a point above the bridge at Fort Snelling and as to its being repaired fully before the boat arrived at the piers where the barge was injured?

Ans. 3. The rudder was fully repaired before we left the mouth of Minnesota River, and there is about where it happened.

Ques. 4. Did you see the accident or did you know anything of the accident except the crash, of your own knowledge; how long had you been in the engine-room?

Ans. 4. I did not. I was in the engine-room at the time. No, sir, the crash is all I knew of my own knowledge. I had been in the engine-room since we left the mouth of the Minnesota River.

Ques. 5. Did you see the barge after she was landed, & after the injury?

Ans. 5. Yes, sir; I saw her.

Ques. 6. How was it broken?

Ans. 6. It was broken near about midships, the side.

Ques. 7. How much was it broken, could you tell?

Ans. 7. You couldn't tell exactly; there was some injury done below the surface of the water.

LOUIS METTMILLER.

Cross-examination waived.
Adjourned until to-morrow between the same hours.
Adjourned from 15th to 16th inst.

W. HAYDEN EDWARDS,
Notary Public.

Dep'n of C. W. Fisher.

FEB. 16TH.—Counsel present.

And the said C. W. FISHER, being by me first carefully examined, cautioned, and sworn to testify the truth, the whole truth, and
100 nothing but the truth, deposes and says:

Ques. 1. State your age, residence and occupation, and how long you have followed it.

Ans. 1. I am 42 years of age; Cincinnati, O., is my residence; I am inspector of boilers for the U. S. Government; local inspector; am a Government officer; I have followed it two years.

Ques. 2. State what, if anything, you know of the machinery and running-apparatus of the Lady Pike, if you inspected her as Government officer, and when, and what was its condition then?

Ans. 2. The condition of her machinery was good. I inspected her the 24th of November, 1865, and gave her her papers for a year. The condition was then good.

Ques. 3. What connection had you with running steamboats on the western rivers, and in what capacity, and how long prior to becoming inspector?

Ans. 3. I was engineer on the river from the spring of the year 1842 until spring of 1863; then I commanded a steamboat; then I became inspector. I was striker from the year 1838 until 1842.

Ques. 4. What was the character of the steamboat Lady Pike compared with the steamboats navigating the Upper Mississippi and Minnesota Rivers, and doing the transient business on those rivers?

Ans. 4. We passed her for one year, and considered her as good a boat as any of her class & age. She was equally as good as any of the boats navigating those rivers, of her age and class; boats have gone up there from here that were inferior to her, and boats have gone up there from here better because they were new.

Ques. 5. For what trade and business was the boat built, and what was her general character for being a good and competent boat for carrying freight & passengers?

Ans. 4. She was built for the Memphis & Cincinnati packet trade, and, previous to going around on those rivers, run in the Cincinnati & Madison packet trade, I think in the place of C. T. Dumont. She was good as any of the boats of her class of stern-wheel boats.
101 She was running in the place of good boats that were running in good trades.

Ques. 6 State whether her machinery was new or second-hand when the boat was built.

Ans. I can only say that I think her machinery was new. I could state positively if I had looked at my books. Many of the best boats are built in which machinery that has been used once before is placed, and used again.

Cross-examination:

Quest. 1st. How were her engines for power?

Ans. 1st. Well, sir, they were good; 16 inches and five-feet stroke, I think.

Ques. 2. Have you ever been on her while running?

Ans. 2. No, sir.

Ques. 3. You have, then, no knowledge of her power to tow, or her speed, except from inspecting her machinery?

Ans. 3. I have no knowledge other than this; I have been on boats, of the same power, and same size of machinery, and judge from that.

Re-examined:

Ques. 1. Have you ever seen her running?

Ans. I have seen her running up and down past the wharf, and I am satisfied that she had good power, judging from the proportions between her hull and machinery, and from being on other boats of the same kind and size and character.

Recross-examined:

Ques. 1. At what would you estimate her speed up stream and down?

Ans. 1. Up stream seven miles, and down stream about twelve, without a tow.

Ques. 2. How much difference would a tow of three barges of twenty thousand bushels make?

Ans. 2. About (2) two miles.

Re-examined:

102 Ques. 1. That would depend a great deal upon the depth of the tow compared with the depth of the boat, and the character of the fuel?

Ans. 1. A boat will tow better when she is loaded than when light; of course it depends somewhat upon the fuel.

C. W. FISHER.

Adjourned until Monday, the 18th inst., from this, Saturday, the 16th inst.

W. HAYDEN EDWARDS, *N. P.*

Deposition of Alex. M. Grant.

MONDAY, THE 18TH INST.—Counsel present.

And the said ALEX. M. GRANT, being by me first carefully examined, cautioned, and sworn to testify the truth, the whole truth, and nothing but the truth, deposes and says:

Examination-in-chief:

Quest 1. State your age, your residence, and your occupation, and how long, and where you have followed it.

Ans. 1st. I am 41 years of age; I reside at St. Louis, Missouri; I am a steamboat pilot from St. Louis to Fort Snelling and Stillwater; from St. Louis to La Selle, and from St. Louis to New Orleans; I have followed it from St. Louis up the Illinois River from the year 1839 until the year 1856; I run from St. Louis to Galena and Stillwater since 1856; I was in the Government service, on the Mississippi squadron, from the fall of 1861 until April, 1865; since that time I have been pilot on the Upper Mississippi again.

Ques. 2nd. Were you on board the steamer Lady Pike, in April last, when the barge Salmon, in tow of that boat, struck the pier just above St. Paul, and was lost, having wheat on board; and, if so, in what capacity were you acting?

Ans. 2. I was on board of the Lady Pike, and was acting as pilot.

Ques. 3. Who was at the wheel at the time you undertook to pass through the piers?

Ans. 3. Mr. Looney was at the wheel at the time.

Ques. 4. Please state where you were, and what you saw, and what caused the accident—the barge Salmon to strike the pier.

103 Ans. 4. I was in the pilot-house on the opposite side of the wheel from Mr. Looney, to advise and give him assistance, if necessary, in handling the boat. I think the accident was caused by a light flaw, or gust of wind, as we call it on the river, striking the boat on the starboard side, causing her to flank broadside towards the pier. The gust of wind came up suddenly, as it often does in that country, while, or after, the wind was dying out, having blown more or less through the day.

Ques. 5. Had you had any wind that affected the running of the boat after leaving the bridge at Fort Snelling, until this sudden flaw or gust of wind struck you while passing through these piers?

Ans. 5. We had had very little wind; none that would affect the handling of the boat. We had no trouble after getting straightened down the river below the bridge at Fort Snelling, until we met with the accident at the other bridges, or piers.

Ques. 6. In what way were you entering the draw prior to this gust of wind?

Ans. 6. As near as I could tell about the centre, between the break of a pier that was under water and the one we struck.

Ques 7th. Would there have been, in your opinion, any difficulty in passing through these piers had it have not been for this gust of wind?

Ans. 7. I think not. I thought she would miss the pier; I was so certain that she would miss the pier, that I was about to set down in the pilot-house, when I discovered the boat drifting broadside toward the pier.

Ques. 8. What was done by you in the pilot-house to counteract the effect of the wind, and could anything more have been done? If so, what?

Ans. 8. We give her the wheel to the starboard to hold her away from the pier. I think nothing more could have been done, as the bow of the barges were then abreast of the upper end of the pier; it was to' late for us to have attempted to have backed out.

104 Ques. 9. What was the character and ability of Looney as a pilot, and how was the boat manned and equipped at the time?

Ans. 9. Mr. Looney has the reputation of being a good pilot. I believe the boat was fully manned and equipped at the time.

Ques. 10. How were the barges being towed, and what was the proper way of towing them, the boat being light herself?

Ans. 10. The barges were being towed alongside of the boat, their bows being some ten or fifteen feet forward of the bow of the steamboat, one barge on the starboard side and two on the larboard. There is a great difference in boats about towing; we found that that was the best way to tow them with that boat, the boat having full-length cabin, and drawing but about twenty-six inches of water.

Ques. 11. What was the condition of the other piers outside of these as to being covered with water, or otherwise?

Ans. 11. There were several other piers covered with water, with no buoys on them; we had to judge their locality from the breaks or boils they would make in the water.

Ques. 12. Suppose your barges were fitted for being rowed and not for towing, as barges are fitted up for being towed, which means, in

your judgment, would have been the safest way of getting them through there, towing or rowing them through, the river being in the condition it was?

Ans. 12. It would have been the safest way to tow them through, unless you had an experienced barge pilot & crew, it not being customary to run barges by hand in that part of the river. Steamboats do not have men that know anything about floating or handling a barge with oars.

Ques. 13. How much space had you on each side of you as you began to enter the piers, as near as you can judge?

Ans. 13. As near as I can judge we had about 30 feet.

Ques. 14. Were you on watch when the barges went up through there; if so, were they towed up?

Ans 14. I was in the pilot-house when they went up through
105 the piers; they were towed through. I am not positive whether I was at the wheel or not; I think I was; either Looney or myself was.

Ques. 15. How did the current pass down between these piers, in reference to being in line with the piers?

Ans. 15. Very nearly straight or parallel with the piers.

Ques. 16. How was the water, when you went up, compared with the water when you came down through these piers?

Ans. 16. It was about the same stage of water.

Ques. 17. When this gust of wind struck you, was there any possible mode of avoiding this accident, or was it unavoidable?

Ans. 17. I knew of no possible mode of avoiding it. I think it was unavoidable.

Ques. 18. Are you sure whether the barges were about even with the bow of the boat or a little forward?

Ans. 18. I am sure they were a little forward of the bow of the boat. The one that struck might have been about even or abreast.

Ques. 19. About what was the speed of your boat, while entering these piers?

Ans. 19. I think she was making about seven miles an hour.

Ques. 20. Which is the best condition while running a boat, to hold her in her position running slow, or her ordinary speed, &, while passing through piers, which is the safest, at slackened speed or her ordinary speed?

Ans. 20. That would depend on the depth of the water, whether it was shoal or deep. A boat will handle better in very shoal water with slackened speed; in deep water she will handle best going at her ordinary speed.

Ques. 21. Where there is plenty of water, is it or not with our western boats a fact, that you can handle them best, and hold them in position best, while running at their ordinary speed?

Ans. 21. We can handle them best, and hold them to their place best, most steadily, by going at their ordinary speed; they are not so liable to flank, as they would be by going slow.

106 Cross-examination:

Ques. 1. How long had you been on the Lady Pike?

Ans. 1. I had been on her about ten days, I think. I shipped at St. Louis, & this was my first trip. I am not positive, but I think so. I think we left St. Louis the 12th of April.

Ques. 2. How many piers are there there in the river; I mean in the channel, & not on the bottoms?

Ans. 2. In and about the channel there are three piers; I refer to the upper bridge. I don't know how many there are where the barge struck; never counted them.

Ques. 3. Do you remember that there are two piers there that are higher than the rest?

Ans. 3. To the best of my recollection, there were three sticking out of the water. I didn't take any particular notice as to the height; think they are the same height.

Ques. 4. Were those three piers standing in the deep water?

Ans. 4. They were standing within the bank of the river.

Ques. 5. Have you seen them since, often?

Ans. 5. I have not seen them at all since.

Ques. 6. Between which of the piers did you run?

Ans. 6. Between the pier that was sticking out of the water on the St. Paul side, and the break of one to the right of it coming down.

Ques. 7. What do you mean by the break of one?

Ans. 7. I mean the break or boils caused by the pier being under water.

Ques. 8. Could you tell how far this was under water, very near; was it four or five feet under water?

Ans. 8. I should think it was not so far under, from the looks of it.

Ques. 9. How far were the high piers out of water?

Ans. 9. I should think the top of the pier we struck was six or seven feet out of water, or from the water; did not notice very closely.

Ques. 10. Where were the other high piers, from the one you struck?

107 Ans. 10. Farther over to the right of it; towards the shore opposite St. Paul, and beyond the break.

Ques. 11. What sort of a steering boat is the Lady Pike?

Ans. 11. She is a very easy steering boat except in a side wind; in a side wind she does not steer so well.

Ques. 12. Which way would she handle better, loaded or light, with those barges?

Ans. 12. She would handle them better being about half loaded.

Ques. 13. Why?

Ans. 13. Because she would be heavier, and deeper in the water, and not so likely to be blown about by the wind.

Ques. 14. How were the engines of that boat for power?

Ans. 14. I don't know the size of her engines; if they are as I understand, they are 16-inch cylinders & five-foot stroke; that is a fair power for a boat of her size.

Ques. 15. How did those engines move that boat, readily or slowly, as a matter of fact?

Ans. 15. She was not what I would call a very fast boat. I have been on boats of about the same size and power, some of which were faster and some not so fast.

Ques. 16. If that boat was lying in still water with those barges loaded as they were, and you should start her engines rapidly enough to drive her seven miles an hour, how far do you suppose she would move the first minute—how many feet?

Ans. 16. I don't know; that is an experiment I never saw tried.

Ques. 17. Haven't you some idea about it?

Ans. 17. I have no idea. I think she would begin to move about the end of the first revolution, with this tow. I mean move forward, for she don't move backward so readily.

Ques. 18. How far would she move the second revolution?

Ans. 18. I cannot say.

Ques. 19. Would she go ten feet, do you think?

Ans. 19. I don't think she would.

Ques. 20. Would she, the third revolution?

108 Ans. 20. I think it is likely she would.

Ques. 21. How long would she be getting the speed due to the motion of her engines?

Ans. 21. I should think she would get it in about five or six minutes.

Ques. 22. Without her tow, how long would she be getting her speed?

22. She would be probably 3 or 4 minutes.

Ques. 23. How many revolutions does she make, ordinarily running with such a load, in a minute?

Ans. 23. Not being an engineer, I have never made it my business to notice the revolutions of a boat in a minute.

Ques. 24. Can't you give me some idea about it?

Ans. 24. It would be mere guess-work if I do.

Ques. 25. How fast does that boat ordinarily go through the lake with such a tow?

Ans. 25. I think she would make about five miles an hour, or five and a half.

Ques. 26. Toward which of those piers did the current set, the sunken one or the one you struck?

Ans. 26. Very nearly straight through, a little towards the one we struck—very little.

Ques. 27. If you had put your wheel the other way and backed strong, when the wind struck you, what effect would that have had?

Ans. 27. It would have had a tendency to have made her flank harder towards the pier; it would have been backing her toward the pier.

Ques. 28. How would it have had a tendency to have done it?

Ans. 28. By swinging the stern of the boat toward the pier, we would get the current on the starboard side of the boat, which would force or flank her in that direction.

Ques. 29. Was your boat lying with the current or a little across it, when her bow entered the piers?

Ans. 29. Lying fair with the current.

Ques. 30. When did you first notice this wind you speak of?

Ans. 30. Just about the time the bow of the barge was abreast of the upper end of the piers.

109 Ques. 31. How are these barges built, scow or sharp?

Ans. 31. They are what we call model barges.

Ques. 32. What do you mean by a model barge?

Ans. 32. What I mean by a model barge is the bow & stern of the barge are like our western steamboats bows.

Ques. 33. How long were these barges?

Ans. 33. I don't know; something over 100 feet, I think.

Ques. 34. Whereabout on the barge did it hit on the pier?

Ans. 34. On the larboard side of the barge, a little forward of midships.

Ques. 35. Whereabout on the pier did it hit the pier?

Ans. 35. It struck on the side nearest the upper end of it.

Ques. 36. Did it strike & bound off, or did it rub along?

Ans. 36. It bounded off from the pier.

Ques. 37. Was the surface of the pier plane—flat, I mean?

Ans. 37. I am not positive, but think not.

Ques. 38. Was it rough, with projections in the masonry, or was it well faced?

Ans. 38. I don't think there *was* any projections; it was ordinarily smooth.

Ques. 39. How did the wind strike you—broadside?

Ans. 39. Very nearly broadside; it might have been a little aft.

Ques. 40. How much more room would it have required to have passed the pier?

Ans. 40. Well, I should think ten or twelve feet would have been sufficient.

Ques. 41. How much room did you have to spare, on the starboard, as you struck?

Ans. 41. Probably 40 feet.

Ques. 42. As the boat entered between the piers, whereabout was the bow of the boat, as to the centre & between the pier, & the break you mentioned?

Ans. 42. It was about in the centre.

Ques. 43. What was the weather that day?

Ans. 43. It was rather pleasant; there was more or less wind through the day.

Ques. 44. How was it during the day; were you bothered at all by the wind?

Ans. 44. Yes, sir, we were, in the Minnesota River, at different times.

110 Ques. 45. So as to make you much trouble?

Ans. 45. No, not a great deal of trouble.

Ques. 46. Were you bothered at the upper bridge?

Ans. 46. We were bothered some at the upper bridge.

(Obj. to.)

Ques. 47. Did you touch either of those piers?

(Obj. to.)

Ans. 47. We did not.

Ques. 48. What occasioned the difficulty at the upper piers?

(Obj. to.)

Ans. 48. Wind.

Ques. 49. Were you obliged to back up there by reason of the wind?

(Obj. to.)

Ans. 49. We had landed to do some business at the warehouse above the bridge, and, while backing out, we had to back up to get a fair start to enter the bridge; in backing out we broke one of our rudders against the bank.

Ques. 50. How long were you detained by that, repairing the rudder?

Ans. . I think about an hour and a half.

Ques. 51. Had you been taking on freight at this warehouse?

Ans. . I don't think we did; am pretty certain we did not. We were there about half an hour; probably a little longer.

Ques. 52. Does it require more care, as far as currents are concerned, to handle a boat in high water than it does in low?

Ans. . That depends upon what part of the river you are in. It requires more care in running through bridges in high water than it does when low, because the current is much stronger.

Ques. 53. Would the gust of wind that struck you, (while you were entering the piers,) affect*ed* you in the open river?

Ans. 53. It would.

Ques. 54. Enough to have noticed it?

Ans. 54. Yes, sir.

Ques. 55. Did it careen the boat?

Ans. 55. It did not; it was not strong enough for that.

Ques. 56. What effect would it have had upon you in the open river?

111 Ans. 56. It would make her flank, or go sideways.

Ques. 57. Not enough to have bothered you much, would it?

Ans. 57. It wouldn't have done any harm unless we were running near something.

Ques. 58. Would it have bothered you running down from Fort Snelling?

Ans. 58. But very little.

Ques. 59. Did the boat drift across the current, or quartering with it?

Ans. 60. The wind blew her more across than any other way.

Ques. 61. Do you know how much damage it *done* to the barge?

Ans. 62. I know that it sunk her. I do not know what was broken.

Ques. 63. Had the bows of the barges lapped the piers at all when the wind struck the boat, do you think?

Ans. 63. I think the bows of the barges were just about even with the upper end of the pier.

Ques. 64. How long are the piers up and down the river?

Ans. . I don't know exactly; should judge they were twenty or thirty feet.

Ques. 65. Did you hold up at all in coming through the piers?

Ans. . We did not.

Ques. 66. I think you said that you thought that there was about 30 feet to spare on each side of the barges had the wind not have struck you?

Ans. . As near as I could judge, that was about the distance.

Ques. 67. What was the ordinary gait of that boat coming down stream with barges?

Ans. 67. At that stage of the water, with good fuel, she would make about eight miles an hour down stream, according to my judgment.

Ques. 68. Don't you think she would make ten?

Ans. 68. I don't think she would; she might.

Ques. 69. What time did you leave Shakopee that morning?

Ans. 69. We left there at sunrise; don't know the time of day exactly.

112 Re-examined:

Ques. 1st. When a boat like the Pike is going down stream with three loaded barges, the boat light, & the barges have come about to the piers of a bridge like this, what would be the effect of backing, in all probability?

Ans. 1st. In all probability it would get us into trouble, as it takes some time to check her headway; and stern-wheel boats are not certain about backing when we want them.

Ques. 2. Had you any previous notice of the wind; or had you had any reason to expect it until it struck you?

Ques. 2. No, we had not.

Ques. 3. You speak of the trouble at the bridge at Fort Snelling; will you state whether or not the approaches to that bridge from above are not crooked, & whether or not the piers are as far apart as the piers below, where the accident occurred?

Ans. 4. The approaches are crooked & narrow; the Minnesota River

is a narrow & crooked river. The piers above are not so far apart as they are below—as the space we were running through.

Ques. 5. In passing between or approaching the piers was there any want of care or skill upon the part of any in managing the boat, either in approaching or passing the piers?

Ans. 5. I do not think there was.

Ques. 6. What is the shape of a model-barge, or of the hull of the ordinary stern-wheel steamer on the western waters, as to the bow being somewhat bluff and the bottow somewhat flat?

Ans. 6. The bows are what we call full or round, and the bottoms are flat, & made for carrying as much freight as possible during shoal water.

Ques. 7. Will you state whether or not the rudder was in good working-trim and fully repaired before she left Fort Snelling?

Ans. 7. It was.

ALEX. M. GRANT.

Adjourned from Monday, 18th ins't, until .

113 UNITED STATES OF AMERICA,
State of Ohio, Hamilton County, ss:

I, W. Hayden Edwards, a notary public within and for the county and State aforesaid, appointed, qualified, and commissioned as stated in the caption hereof, do hereby certify that the reason for taking the foregoing depositions is, and the fact is, that the said witnesses reside more than one hundred miles from Milwaukee, in the United States district for the district of Wisconsin, the place of trial of the cause for which the said depositions were taken, and that the same are necessary. I further certify that I caused a notice to be served on E. Mariner, libellant's attorney, of the time and place of taking the said deposition, which notice is hereto attached. I further certify that, on the 13th, 14, 15, 16, & 18th days of Feb'y, A. D. 1867, at the office of Lincoln, Smith & Warnock, in Cincinnati County, and State aforesaid, I was attended by Mr. F. Davidson, P. S. Davidson, S. Enyard, A. C. Monfort, J. Pursinger, Louis Meltmiller, C. W. Fisher, & Alex. W. Grant, they being of sound mind and lawful age, and the said witnesses were each and all, previous to the commencement of their respective depositions, carefully examined and cautioned, and solemnly sworn to testify the truth, the whole truth, and nothing but the truth, and the depositions hereinbefore appearing were by me reduced to writing in the presence of the said witnesses respectively, and were read over by me to the said witnesses respectively, and thereafter subscribed by the said witnesses respectively in my presence. I further certify that I am not of counsel or attorney, or relative of either, of the parties to the cause, or in any manner interested in the event of the said cause. All of which is here certified as to the reason for taking said depositions, and the manner in which they are taken.

In testimony whereof I have hereunto set my hand and official seal.

[SEAL.] W. HAYDEN EDWARDS,
Notary Public, Ham. Co., Ohio.

UNITED STATES OF AMERICA,
114 *State of Ohio, Hamilton Co., ss:*

Be it remembered that on this 28th day of June, 1867, before me, W. H. Edwards, a notary public, duly appointed, qualified, and commis-

sioned, and acting as such, and duly authorized under and by virtue of the laws of the United States to take depositions to be used in the courts of the United States, personally appeared at the office of Lincoln, Smith & Warnock, in the said county of Hamilton, Cha's S. Faulkner, of sound mind & lawful age, witness on behalf of respondents, in a cause pending in district court of the United States for the district of Wisconsin, wherein the Germania, the Niagara, the Hanover, & the Republic Ins. Co's are libellants, & the ste'b't Lady Pike, her engines, boilers, &c., & barge Salmon, are respondents.

Deposition of Charles S. Falkner.

And the said CHA'S S. FALKNER, being by me first carefully examined, cautioned, & sworn to testify the truth, the whole truth, and nothing but the truth, deposes and says:

Ques. 1. State your age, residence, and occupation; how long, and where, have you followed it; were you ever on the st'b't Lady Pike; if so, when, and in what capacity, & how long were you on her?

Ans. I am 53 years old; reside in Cincinnati; am a steamboat engineer, and have been for 34 years running on the Ohio, Upper & Lower Mississippi Rivers, and tributaries. I was engineer, first engineer, of the Lady Pike in the latter part of 1864, and all of the year 1865 to December.

Quest. 2. What was the condition of the machinery of the Lady Pike when you left the boat; had her machinery been repaired; if so, when, by whom, and to what extent?

Ans. Her machinery was in No. one condition when I left her. I fully repaired it. Superintended repairs of machinery during November and December, 1865. She laid up here at Cincinnati; was docked, overhauled, and generally repaired. Her engines and machinery were specially well fitted up and put in good order. The boat ran here in the Madison trade after she was repaired two or three weeks, and
115 then, on resumption of trade in the spring, started for the Upper Mississippi. She only ran here in the Madison trade after she was repaired a short time, a few weeks, and then went to the Upper Mississippi.

Quest. 3. Do you know Peter Connoly, who was engineer of the Lady Pike when she went in the Upper Mississippi trade; if so, what was his reputation as an engineer among steamboat & river men?

Ans. I do know Peter Connoly. Have known him 15 or 16 years personally and as an engineer. He was the engineer of the Lady Pike, and is an old and number one engineer. Has had a great deal of experience on the rivers, and stands among the first in his profession as an engineer. He is a careful & reliable man.

Ques. 4. Do you know where Peter Connoly is now & where he has been for some months past?

Ans. He was on the Mary Forsythe during the winter of 1866 and 1867, running from St. Louis to New Orleans, & in the spring of 1867 went to the mountains on the steamboat Agnes, and I suppose he is up there yet. I came out from the mountains about two months ago, and he was on his way up then on the Agnes, and it is not time yet for her return. I mean the Rocky Mountains.

his
CHARLES S. + FALKNER.
mark.

The witness' hand was yesterday mashed, and he is unable to hold the pen, and write his name on that account.

W. H. EDWARDS,
Notary Public.

Cross-examination by Judge Hoadley:

Ques. 1. How long was the Lady Pike laid up that winter before going to the Upper Mississippi? What I want to know is how long was her machinery out of use after being repaired & before she left for the Mississippi.

Ans. 1. Her machinery was not out of use at all after being repaired before leaving for the Upper Mississippi. She run a short time in the Madison trade and a short time in the Tennessee River trade before going to the Upper Mississippi after being repaired; but never laid up longer than to get a load.

116 his
CHARLES S. + FALKNER.
mark.

UNITED STATES OF AMERICA,
State of Ohio, Hamilton County, ss:

I, W. Hayden Edwards, a notary public within and for the county and State aforesaid, appointed and qualified and commissioned as stated in the caption hereof, do hereby certify that the reason for taking the foregoing deposition is, and the fact is, that the said witness reside' more than one hundred miles from Milwaukee, the place of trial of the cause for and in which the said deposition was taken, and that the same is necessary. I further certify that, in accordance with a verbal agreement between E. Mariner, att'y for libellants, and Lincoln, Smith & Warnock, att'ys for respondents, I notified Hoadley, Jackson & Johnson of the taking of the depositions, and they appeared and cross-examined said witness. I further certify that, on the 28th day of June, 1867, at the office of Lincoln, Smith & Warnock, in the said county & State, I was attended by Charles S. Falkner, he being of sound mind and lawful age; and the said witness was, previous to the commencement of his deposition, carefully examined and cautioned, and solemnly sworn to testify the truth, the whole truth, and nothing but the truth, and the deposition hereinbefore appearing was by me reduced to writing in the presence of the said witness, except a part—the first part—which was reduced to writing in the presence of the witness by C. H. Stephens, and were read over by me to the said witness and thereafter subscribed by the said witness in my presence. I further certify that I am not of counsel or attorney, or relative of either, of the parties to the cause, or in any manner interested in the event of the said cause. All of which is here certified as to the reason for taking said depositions, and the manner in which they are taken.

In testimony whereof I have hereunto set my hand and official seal.

[SEAL.] W. HAYDEN EDWARDS,
Notary Public, Ham. Co., O.

117 UNITED STATES OF AMERICA,
State of Ohio, County of Hamilton, ss:

Be it remembered that on this 29th & 30th days of March, A. D. 1867, before me, W. Hayden Edwards, a notary public duly appointed, qualified, and commissioned, and acting as such, and duly authorized under and by virtue of the laws of the United States to take depositions to be

used in the courts of the United States, personally appeared, at the office of Lincoln, Smith & Warnock, in the said county of Hamilton, Coryden Looney and James Newton, of sound mind and lawful age, witnesses on behalf of the respondents in a certain cause pending in the district court of the United States for the district of Wisconsin, wherein The Germania Insurance Company, The Niagara Insurance Company, The Hanover Insurance Company, & The Republic Insurance Company are libellants, and the steamboat Lady Pike, her engines, boilers, machinery, boats, tackle, apparel, & furniture, & against the barge Salmon, are respondents.

Deposition of Corydon Looney.

An the said CORYDON LOONEY, being by me first carefully examined, cautioned, and sworn to testify the truth, the whole truth, and nothing but the truth, deposes and says:

Ques. 1. State your age, residence, and occupation, and how long and where have you followed it, and how long have you been a pilot on the Upper Mississippi and Minnesota Rivers, and are you familiar with the navigation of the Upper Mississippi at and above St. Paul, and also the navigation of the Minnesota?

Ans. 1. I am 39 years old. I reside in Dubuque, Iowa. I am a steamboat pilot by occupation. I have followed it for eleven years. I followed it from Galena to St. Paul the first three years, then from La Crosse to St. Paul, and from La Crosse to Shackopee. I have been a pilot on the Upper Mississippi and Minnesota Rivers since the year 1856. I am familiar with the navigation of the Upper Mississippi at and above St. Paul, and also the navigation of the Minnesota River. I have been living heretofore at La Crescent, Minnesota.

118 Ques. 2. What, if any, connection had you with the steamboat Lady Pike in the month of April, 1866, when a barge-load of wheat in tow of said steamboat was sunk by striking the piers of the railroad bridge at the upper end of the city St. Paul? If you were aboard of the boat, state where you were, what your connection with the boat was, and the circumstances relating to said injury.

Ans. 2. I was pilot of the steamboat Lady Pike. I got aboard at La Crosse on the trip up. Was on board at the time of the sinking of the barge Salmon at the pier at the upper end of St. Paul, in the month of April, 1866. I came aboard at La Crosse. We had the barges in tow on our trip up. They were taken from Savannah up to Shackopee on the Minnesota River. There the barges were loaded with wheat, and we come down the river. I had charge of the wheel at the time the accident happened. I think the accident was caused by a sudden gust or blast of wind that struck the boat just as we entered the piers. This wind struck the boat just as we were entering the piers, and drifted us over against them. We were positive, both of us, before this wind struck us, that we would go through without any trouble. I refer to Mr. Grant, who was in the pilot-house at the time and standing at the wheel with me. This was quite a smart squall, and are very common on the upper rivers.

Ques. 3. State what you did to avoid striking the piers, and what power you had to avoid the accident after the wind struck you, when it first struck you, or you first began to feel it?

Ans. 3. All that we could do was done. When we found that we were drifting we put our wheel to the starboard to hold her off the

The witness' hand was yesterday mashed, and he is unable to hold the pen, and write his name on that account.

W. H. EDWARDS,
Notary Public.

Cross-examination by Judge Hoadley:

Ques. 1. How long was the Lady Pike laid up that winter before going to the Upper Mississippi? What I want to know is how long was her machinery out of use after being repaired & before she left for the Mississippi.

Ans. 1. Her machinery was not out of use at all after being repaired before leaving for the Upper Mississippi. She run a short time in the Madison trade and a short time in the Tennessee River trade before going to the Upper Mississippi after being repaired; but never laid up longer than to get a load.

116 his
CHARLES S. + FALKNER.
mark.

UNITED STATES OF AMERICA,
State of Ohio, Hamilton County, ss:

I, W. Hayden Edwards, a notary public within and for the county and State aforesaid, appointed and qualified and commissioned as stated in the caption hereof, do hereby certify that the reason for taking the foregoing deposition is, and the fact is, that the said witness reside' more than one hundred miles from Milwaukee, the place of trial of the cause for and in which the said deposition was taken, and that the same is necessary. I further certify that, in accordance with a verbal agreement between E. Mariner, att'y for libellants, and Lincoln, Smith & Warnock, att'ys for respondents, I notified Hoadley, Jackson & Johnson of the taking of the depositions, and they appeared and cross-examined said witness. I further certify that, on the 28th day of June, 1867, at the office of Lincoln, Smith & Warnock, in the said county & State, I was attended by Charles S. Falkner, he being of sound mind and lawful age; and the said witness was, previous to the commencement of his deposition, carefully examined and cautioned, and solemnly sworn to testify the truth, the whole truth, and nothing but the truth, and the deposition hereinbefore appearing was by me reduced to writing in the presence of the said witness, except a part—the first part—which was reduced to writing in the presence of the witness by C. H. Stephens, and were read over by me to the said witness and thereafter subscribed by the said witness in my presence. I further certify that I am not of counsel or attorney, or relative of either, of the parties to the cause, or in any manner interested in the event of the said cause. All of which is here certified as to the reason for taking said depositions, and the manner in which they are taken.

In testimony whereof I have hereunto set my hand and official seal.

[SEAL.] W. HAYDEN EDWARDS,
Notary Public, Ham. Co., O.

117 UNITED STATES OF AMERICA.
State of Ohio, County of Hamilton, ss:

Be it remembered that on this 29th & 30th days of March, A. D. 1867, before me, W. Hayden Edwards, a notary public duly appointed, qualified, and commissioned, and acting as such, and duly authorized under and by virtue of the laws of the United States to take depositions to be

used in the courts of the United States, personally appeared, at the office of Lincoln, Smith & Warnock, in the said county of Hamilton, Coryden Looney and James Newton, of sound mind and lawful age, witnesses on behalf of the respondents in a certain cause pending in the district court of the United States for the district of Wisconsin, wherein The Germania Insurance Company, The Niagara Insurance Company, The Hanover Insurance Company, & The Republic Insurance Company are libellants, and the steamboat Lady Pike, her engines, boilers, machinery, boats, tackle, apparel, & furniture, & against the barge Salmon, are respondents.

Deposition of Corydon Looney.

An the said CORYDON LOONEY, being by me first carefully examined, cautioned, and sworn to testify the truth, the whole truth, and nothing but the truth, deposes and says:

Ques. 1. State your age, residence, and occupation, and how long and where have you followed it, and how long have you been a pilot on the Upper Mississippi and Minnesota Rivers, and are you familiar with the navigation of the Upper Mississippi at and above St. Paul, and also the navigation of the Minnesota?

Ans. 1. I am 39 years old. I reside in Dubuque, Iowa. I am a steamboat pilot by occupation. I have followed it for eleven years. I followed it from Galena to St. Paul the first three years, then from La Crosse to St. Paul, and from La Crosse to Shackopee. I have been a pilot on the Upper Mississippi and Minnesota Rivers since the year 1856. I am familiar with the navigation of the Upper Mississippi at and above St. Paul, and also the navigation of the Minnesota River. I have been living heretofore at La Crescent, Minnesota.

118 Ques. 2. What, if any, connection had you with the steamboat Lady Pike in the month of April, 1866, when a barge-load of wheat in tow of said steamboat was sunk by striking the piers of the railroad bridge at the upper end of the city St. Paul? If you were aboard of the boat, state where you were, what your connection with the boat was, and the circumstances relating to said injury.

Ans. 2. I was pilot of the steamboat Lady Pike. I got aboard at La Crosse on the trip up. Was on board at the time of the sinking of the barge Salmon at the pier at the upper end of St. Paul, in the month of April, 1866. I came aboard at La Crosse. We had the barges in tow on our trip up. They were taken from Savannah up to Shackopee on the Minnesota River. There the barges were loaded with wheat, and we come down the river. I had charge of the wheel at the time the accident happened. I think the accident was caused by a sudden gust or blast of wind that struck the boat just as we entered the piers. This wind struck the boat just as we were entering the piers, and drifted us over against them. We were positive, both of us, before this wind struck us, that we would go through without any trouble. I refer to Mr. Grant, who was in the pilot-house at the time and standing at the wheel with me. This was quite a smart squall, and are very common on the upper rivers.

Ques. 3. State what you did to avoid striking the piers, and what power you had to avoid the accident after the wind struck you, when it first struck you, or you first began to feel it?

Ans. 3. All that we could do was done. When we found that we were drifting we put our wheel to the starboard to hold her off the

pier. When the wind struck us it was too late to have backed out. It first struck us about the time we were entering the piers.

Ques. 4. State what, if any, wind there was to trouble you or affect the running of the boat after leaving Fort Snelling, and prior to the time this squall struck you.

Ans. There was no wind to affect the running of the boat after
119 leaving Fort Snelling until this squall struck us.

Ques. 5. How were you towing your barges, and why were you towing them in that way?

Ans. 5. Towing one on the starboard side and two on the larboard. We were towing them in this way because that was the best way to handle them, loaded as they were, and coming down stream with that boat.

Ques. 6. Which was the largest barge of the three?

Ans. 6. The one on the starboard side was the largest and heaviest barge.

Ques. 7. How long has it been usual on the Upper Mississippi to tow barges loaded in that way—with grain in the bulk?

Ans. 7. I have known it to be done for the last four or five years.

Ques. 8. How was the steamboat and barge manned and equipped?

Ans. 8. They were fully manned and equipped. They had all the things that are usual and necessary.

Ques. 9. What is the usual way of taking barges in tow through piers of the kind in question?

Ans. 9. We always towed them alongside.

Ques. 10. Which is the safest and best way to get barges through between piers of that kind, and what other way had you at the time?

Ans. 10. We had no other way but to tow them through, and this was the safest and best way, and would have gone through safe except for this squall. Barges of that kind are built for towing altogether; they are not provided with sweeps, and could not be rowed through; for rowing barges they are provided with sweeps and crews that are acquainted with managing a craft in that way. An ordinary steamboat crew would not be able to manage one even if it were arranged to be managed in that way.

Ques. 11. What is the usual kind of barge in which grain is carried in bulk on the Upper Mississippi, and how is it rigged and usually controlled and managed?

Ans. 11. We call them bulk barges. They are built similar to
120 these the Lady Pike had in tow. They are model barges, built to carry grain in bulk. These were rather better than they usually are; they are not built for being rowed, but for being towed altogether; they are not supplied or built with sweeps or the usual means for being rowed.

Ques. 12. To what extent has that sort of barge been used for carrying grain in bulk on the Upper Mississippi during the last four or five years?

Ans. 12. They havn't carried wheat in any other way during the last three years except a little at a time. These barges are used a great deal.

Ques. 13. State how your boat was pointed with reference to her position between the piers, and how would she have entered had this flaw not have struck her.

Ans. 13. I think we would have passed through the centre, as she was pointed that way, and we would have had about the same room to

spare on each side had the wind not have struck us just as we were about to enter.

Ques. 14. Was there or not anything the matter with your rudder when she undertook to pass the piers where the accident happened?

Ans. 14. There was nothing the matter with it. It had been injured at Fort Snelling, but was fully repaired before we left Fort Snelling.

Ques. 15. How does the width of the draw-opening of the bridge at Fort Snelling compare with the piers that you undertook to pass?

Ans. 15. It is a great deal less, but how much I don't know.

Ques. 16. Who was on watch with you besides your partner, Mr. Grant?

Ans. 16. Capt. Enyard was on the hurricane-deck forward; Capt. Monfort was on one of the barges, I think. The mate was on watch also, but where I don't know. I think both of the engineers were on watch all day.

Ques. 17. Have you a release; if so, produce it and attach it; who presented it to you, and what do you know of the signatures?

121 Ans. 17. I have a release. I produce it and attach it, and make it a part of my deposition, and marked "A." Mr. Lincoln handed to me, saying that it had been left with him for the benefit of Capt. Monfort, Mr. Grant, and myself. He handed it to me in the presence of Capt. Peirce, one of the owners of the st'boat Lady Pike. I heard Capt. Pearce admit that it was his signature, and I have seen him write often, and know it to be genuine. I know nothing about Mr. Hanley's signature.

Ques. 18. How was your boat running at the time you undertook to pass these piers where the accident happened?

Ans. 18. About seven miles an hour, her usual speed.

Ques. 19. What is the best condition of a boat as to speed for safe running of a boat with that load through such piers as those?

Ans. 19. I would rather have her at her ordinary speed. She will handle better and mind the helm better at her usual speed at that stage of water. We were running through or between the widest piers and those usually run between.

Ques. 20. Do you know the width between those piers?

Ans. 20. Shouldn't think it was far from 150 feet; between 140 and 150 feet.

Ques. 21. What was the width of your fleet, including boat and barges?

Ans. 21. I should judge about eighty-five or ninety feet.

Ques. 22. How would the Lady Pike compare with the boats that run from Savannah up the Minnesota, or St. Paul up the Minnesota, in class, power, &c.?

Ans. 22. She would compare well with any boat that run as far up as Fort Snelling in any respect. She is larger and better than many of them that go as far as St. Paul. They all tow barges. She is larger and more powerful than the boats that ordinarily run up the Minnesota River. She was the best stern-wheel boat that I have known on that river for several years.

Ques. 23. What is the usage in relation to towing barges loaded with wheat in bulk with stern-wheel boats, and how do they compare with side-wheel boats for towing?

Ans. 23. The' tow with stern-wheel boats. They are preferred
122 to the side-wheel boats for towing. They are generally now adopted on the rivers.

Ques. 24. What, if any, other freight or business had you out of the

Minnesota River besides these three barges? Why was the barges placed alongside?

Ans. 24. None that I recollect of. The boat being light, that is, no freight in her, she would handle better than they would out forward.

Ques. 25. Where do you expect to be engaged this spring and summer, and could you or not attend court at Milwaukee at any time during the summer or spring?

Ans. 25. I expect to be engaged all spring and summer running from Dubuque to Stillwater, Minnesota. It would be almost impossible for me to attend court, besides a great loss. I am getting $200 per month, and might lose my place besides.

Ques. 26. What was the condition of the machinery and steering-apparatus generally when you attempted to pass between the piers?

Ans. 26. It was good, as far as I know. The boat handled well; if there was any defect in it I was not aware of it.

Adjourned until to-morrow, the 30th inst., by consent.

Cross-examined by Judge Hoadley:

Ques. 1. How long have you been a licensed pilot above St. Paul and in the Minnesota River? How far is Shackopee above St. Paul, and on what stream?

Ans. 1. I think about a year, sir, as near as I can remember; same time in the Minnesota River. Shackopee is called 50 miles above St. Paul, on the Minnesota River.

Ques. 2. Is La Crescent above or below St. Paul?

Ans. 2. Below.

Ques. 3. Do you recollect in what month in the year you *was* first licensed to run above St. Paul and on the Minnesota River?

Ans. 3. I don't recollect, and couldn't tell the month. It was in the year 1866.

123 Ques. 4. How far above the landing at St. Paul is the pier against which the barge of wheat struck?

Ans. 4. I should judge about a mile from what we call Upper St. Paul landing.

Ques. 5. How far above this railroad bridge is Fort Snelling and the mouth of the Minnesota?

Ans. 5. Well, sir, they call it 7 miles from St. Paul to Fort Snelling, and I should judge it was 5 miles from this bridge to Fort Snelling. I mean seven miles from the lower landing to Fort Snelling.

Ques. 6. What was the stage of water in the Mississippi River at the time of this occurrence?

Ans. 6. We call it at a good stage; it was not high and it was not low; it was what we call good steamboat stage. The Minnesota was bank full.

Ques. 7. How rapid was the current just above and between the piers?

Ans. 7. I should think it was running at the rate of four miles per hour—not very rapid.

Ques. 8. Did you slacken your speed on approaching the railroad bridge?

Ans. 8. We did not, sir.

Ques. 9. What time of day did the collision happen?

Ans. 9. Between twelve and three in the day.

Ques. 10. How long did it take you to make your run from Fort Snelling to the place where the accident happened, and have you any means of fixing the time with accuracy?

Ans. 10. I should judge it would take us about three-quarters of an hour from the time we got straightened until we got to the railroad bridge.

Ques. 11. Was the boat making anything near her usual speed before the time of the collision?

Ans. 11. She was making her ordinary speed.

Ques. 12. How much more speed could have been got out of her by effort?

Ans. 12. I think not any at the time we were entering the piers.

Ques. 13. How much speed could she make up stream with the empty barges when she took them up?

Ans. 13. I think about five miles an hour.

124 Ques. 14. Then, the 7 miles an hour you refer was the speed put into her by the steam without respect to the current. Am I right?

Ans. 14. The current certainly would not carry her seven miles an hour.

Ques. 15. What rate of speed could she have made in still water?

Ans. 15. I cannot tell, sir; I am not an engineer.

Ques. 16. How far above the railroad pier was the boat when you was first struck by this flaw of wind?

Ans. 16. I think it was about the time we were entering, and not any above the piers.

Ques. 17. What sort of a day was it—cold or warm, cloudy or sun shining?

Ans. 17. It was rather a clear day; the sun shone all day. It was not very warm. It was what I call a clear day. It was not very warm, as it generally is not in that part of the country at that time of the year.

Ques. 18. Was there any fire in the pilot-house?

Ans. 18. Yes, sir; there had been all day.

Ques. 19. Was the pilot-house open on the sides; if not, how wide open was it in front?

Ans. 19. It was open on both sides, and in front, also. I presume our windows were about five or six feet; I should judge they were six feet. In front it was open four or five feet in width and (10) ten feet in length.

Ques. 20. State how the bows of the barges were arranged in reference to the bow of the steamboat—whether they were in front of it or behind it?

Ans. 20. I think two of them were about ten feet in front of the bow of the steamboat. The third one was a little behind these. I don't know exactly how far.

Ques. —. Which of these was the barge struck?

Ans. 21. The one that was a little further back—the outside barge on the larboard side.

Ques. 21. How was her bow with reference to the bow of the steamboat?

Ans. 21. I think a very little ahead, or about even with the bow of the steamboat.

125 Ques. 22. What were you ci'ting—your jackstaff, or holding your jackstaff on while passing between the piers?

Ans. 22. I couldn't tell what object it was now, but we always have some object. It doesn't need a great deal of attention to objects in the day-time.

Ques. 23. Does the current pass between the piers straight—that is, at right angles to the direction of the bridge?

Ans. 23. I think it does, sir. I think the piers lie on a line with the current at that bridge.

Ques. 24. What part of the wheat barge was struck and in what direction was the blow given?

Ans. 24. I think that barge was struck somewhere near midships—probably a little forward of midships—on the larboard side of the barge.

Ques. 25. What part of the pier did the barge strike?

Ans. 25. I think it struck the pier about broadside.

Ques. 26. Did it mash in the side of the barge and cause her to sink?

Ans. 26. It caused her to sink. I do not know what was broken.

Ques. 27. Was the barge cut loose, and, if so, what became of her?

Ans. 27. She was not cut loose. She was landed on the beach and made fast to a stump or post, I disremember which now, before she was let loose from the steamboat.

Ques. 28. Do you know what became of her and her cargo afterwards?

Ans. 28. The cargo I know nothing about. The barge lay where we left her until the water fell; then she was raised and repaired.

Ques. 29. When you started to go down through the piers, did you aim to go straight through, or is the usual method of navigating to quarter a little in passing through?

Ans. 29. We aimed to go straight through.

Ques. 30. How far above the railroad bridge is there a straight reach in the river?

Ans. 30. I should think about a mile.

Ques. 31. After a boat gets into this reach does she make a straight course to the middle between the piers, and so on through the piers?

Ans. 31. I think she would at that stage of water.

Ques. 32. How far below the railroad bridge is there a straight
126 reach in the river through which you run in the same straight line continued before you make your landing at Upper St. Paul?

Ans. 32. It would be probably a half mile.

Ques. 33. Do I understand, then, that the proper manner of navigating this part of the river is a straight course from a mile above to a half mile below, including the passage between the piers?

Ans. 33. I presume it would be that at that stage of water.

Ques. 34. How often before this collision had you been at the wheel while passing through these piers coming down?

Ans. 34. I never had been at the wheel coming down before through those piers. I never had seen those piers before our trip up. They were built in 1865, and were not completed then; I mean at the time of the accident. I had been up as far as Mankato in the spring of 1865, and I don't think they were built then. Don't remember seeing them then.

Ques. 35. How high above the water were they at the time of the collision?

Ans. 35. I could not tell. The pier we struck was out of water; I don't know how far. There was one that was not out of water of those between which we run.

Ques. 36. Was that the one that was struck or the other one?

Ans. 36. The one that was under water was not the one was struck. We struck the one that was out of water.

Ques. 37. How far underneath the surface of the water was the top of the other one?

Ans. —. I could not tell.

Ques. 38. Was any part of it visible, or any break over it in the water to show where it was?

Ans. —. There was a large break or boil over it; its exact location was visible.

Ques. 39. From what distance was this break or boil visible?

Ans. —. I couldn't tell the exact distance.

Ques. 40. Can you give an estimate whether you could see it two hundred yards off or further?

Ans. —. I could not give the exact distance, but could see it far enough to judge its locality, so as to run by it.

127 Ques. 41. Can you state whether you could see it more than one hundred yards off?

Ans. I could not.

Ques. 42. How far above the water's edge did the other pier project—the one that you struck, project?

Ans. I could not tell exactly; probable between five and seven feet.

Ques. 43. How high above the water was the deck of the barge that was struck?

Ans. I don't remember.

Ques. 44. Have you any idea what the depth of the water was between those piers at that time?

Ans. I have not.

Ques. 45. How near the middle of the river did this collision happen?

Ans. I could not tell; the river was very wide at that time.

Ques. 46. Was the ordinary low-water channel of the Mississippi River at that point between these same two piers?

Ans. Am not positive, but think it was.

Ques. 47. Were these the middle piers of the bridge?

Ans. I do not know; there are so many of them, I can't tell.

Ques. 48. Had you been down at that point of the river since your trip to Mankato, which you have spoken of?

Ans. I had not been down, except on that trip, to Mankato.

Ques. 49. How long had the river been open and clear of ice that spring before this collision?

Ans. I don't know how long it had been open above St. Paul.

Ques. 50. Was there any ice in the river on this trip of the Lady Pike?

Ans. None only in Lake Pepin.

Ques. 51. Who was at the wheel of the Lady Pike when you went up between these piers on your trip up?

Ans. I am not positive whether it was myself or Mr. Grant; it was one of us. We were both in the pilot-house all the time going up and coming down.

Ques. 52. Why were you both in the pilot-house all the time going up and coming down; did it take more than one man to handle that boat?

128 Ans. It did not take but one man at a time; we were both in the pilot-house for the purpose of aiding or assisting each other if it was necessary.

Ques. 53. Was there any special difficulty in that navigation, to require the two pilots in the pilot-house all the way from St. Paul to Shackopee?

Ans. There was not.

Ques. 54. Did you make your entire trip up and down in day-light?

Ans. We did from Fort Snelling up to Shackopee and from there down to St. Paul.

Ques. 55. Did you go from St. Paul up to Fort Snelling on that trip at night?

Ans. It was dark when we got to Fort Snelling; it was not dark when we passed through those piers.

Ques. 56. Had you ever run above St. Paul for the express purpose of learning the river before you got your license?

Ans. I had.

Ques. 57. During what years, and on what boats?

Ans. I can't tell the exact year when I first went up; it doesn't require much time to learn that river.

Ques. 58. What month of the year 1865 were you up to Mankato?

Ans. I think in the last of April, 1865.

Ques. 59. Was that the only trip you made up the river above St. Paul in the year 1865?

Ans. I think it was, further up than Fort Snelling.

Ques. 60. Had you been up between these piers during the year 1865, except your trip to Mankato?

Ans. I think not.

Ques. 61. What direction did the flaw of wind you have spoken of come from?

Ans. I couldn't tell; I don't know what direction the river runs there. It struck us broadside—probably a little aft.

Ques. 62. Did it blow from the larboard or the starboard side?

Ans. It struck us on the starboard side.

Ques. 63. How long did the gale last?

Ans. I couldn't tell; a very short time.

Ques. 64. Was it over before the barge was tied up?

129 Ans. Oh, yes; a long time.

Ques. 65. Did this gust last more than a minute?

Ans. I shouldn't think it did hardly so long; it was over very quick, I know; it was a mere dash of wind.

Ques. 66. Was the captain out on the hurricane roof?

Ans. Capt. Enyard was.

Ques. 67. Did he have a hat on; if so, was it a stove-pipe or a soft hat?

Ans. He had a hat on; don't recollect what kind.

Ques. 68. Was his hat blown off by the wind?

Ans. I don't recollect, sir. I wasn't watching his hat at the time; I had something else to attend to.

Ques. 69. How large a boat is the Lady Pike, and how high above the water is the roof of her pilot-house? Has she a full upper cabin, with a large or a small texas?

Ans. I don't know her dimensions at all; she has a full upper cabin and a common-size texas. How high the roof of the pilot-house is above the water I don't know.

Ques. 70. If you had gone through the opening, as you aimed to, and there had been no such gust of wind, about how far would you, in the pilot-house, have been from each of the piers?

Ans. That would be impossible for me to state, the exact distance. I couldn't do it.

Ques. 71. Please make an estimate, if you can, of that distance.

Ans. I couldn't do it; it would be mere guess-work with me if I should state anything; I am not posted in figures enough for that.

Ques. 72. If you had gone through, as you aimed to, without any gust of wind striking you, how far would your outside larboard barge been from the pier which in fact it struck?

Ans. I think probably fifteen or twenty feet. She would have cleared that much.

Ques. 73. How far would your starboard barge cleared the break or boil in the water indicating the pier on that side?

Ans. I could not tell what distance—being where I was it was impossible.

Ques. 74. Did you not aim to run between the piers so that the pilot-house, in which you were, would be fifteen or twenty feet to the
130 right or starboard side of the middle between the two piers, or did you aim to run through so as to be in the middle yourself?

Ans. We aimed to run through so as to have as much room on one side of the fleet as the other, and not to have the steamboat in the middle; that wouldn't do.

Ques. 75. Before this collision, except on the up trip of the Lady Pike, had you ever seen a boat pass through or between those piers towing three barges, two on one side and one on the other?

Ans. I had not, sir.

Ques. 76. Is there no other way of towing three barges except two on one side and one on the other?

Ans. There are other different ways; they tow them alongside, and one on each side and one in front, and also all three in front.

Ques. 77. Would it have been practicable to have towed these barges one on each side and one in front?

Ans. No, sir, it would not.

Ques. 78. Why not?

Ans. Because we found that the better way to handle them.

Ques. 79. Do you mean to say that it was impossible to tow one on each side and one in front?

Ans. No, sir; I don't mean that it was impossible, but we found the other way was the best to tow them?

Ques. 80. Why did you tow them two on one side and one on the other?

Ans. Because we found that the better way to tow them.

Ques. 81. What rate of speed did the Lady Pike make that trip in passing through Lake Pepin?

Ans. It would be impossible for me to state; I couldn't tell. The speed of a steamboat is something I don't pay any attention to; if she runs it is all right.

Re-examination:

Ques. 1. When were you first licensed as a pilot on the Upper Mississippi, and how far did such licenses permit the pilots having them to go; and have you continued to take out your license from that time
131 on; how many times have you been on a boat as pilot from St. Paul to Fort Snelling previous to this accident?

Ans. 1. I was licensed first as a pilot on the Upper Mississippi in June, 1861, I think; am positive it was in 1861, but not positive as to the month. Such licenses permitted the pilots having them to go as far as St. Anthony's Falls. I have continued to take out my license from that time on, and have one now. I have been up to Fort Snelling every season since 1861, more or less. My first license to run up the Minnesota River I got in 1866, as before stated.

Ques. 2. Is there anything specially difficult in the navigation of the river between Fort Snelling and St Paul? If so, what is it?

Ans. 2. I never found anything—nothing that I know of. There is nothing specially difficult about this bridge. All the bridges are more or less of an obstruction. This, I think, is rather better than bridges generally.

Ques. 3. You are asked from what direction the wind came, and you say that you do not know. What attention do pilots generally pay to the speed per hour that the boats are making or the points of the compass?

Ans. 3. Pilots pay no particular attention to points of the compass. They generally have marks to run by. We don't use any compass. In the first place, the river is so crooked that we could not use a compass. The points of compass are constantly being changed. The pilots generally do not pay any attention to speed; it is a matter for the engineer altogether; they are more likely to pay attention to it.

Ques. 4. You say these piers were commenced in 1865; what time in 1865?

Ans. 4. I am not positive; I think in the summer.

Ques. 5. Where is the bridge as to the corporate limits of St. Paul?

Ans. 5. I think it is within the corporate limits. That is the general opinion.

Ques. 6. How did you learn to become pilot, and what were you doing before you became a pilot?

132 Ans. 6. I was employed as steersman or assistant pilot, and served three years before I became a pilot. A steersman handles the boat by the direction of the pilot. This is the best way to learn to become a pilot; then we have nothing else to do, and give our whole attention to it.

Recross-examination:

Ques. 1. During the year 1864 how many times did you go above St. Paul at the wheel of a boat?

Ans. 1. It would be impossible for me to tell whether I was there in 1864 at all or not. I was there in 1863 several times.

Ques. 2. Were you in the army during the war?

Ans. 2. I was not. I done nothing but pilot since the war commenced.

Ques. 3. At what point did you get your license?

Ans. 3. At La Crosse I got my first license. I got my last license at Dubuque.

Further re-examination:

Ques. 1. Do you remember any year since you got your license that you did not go as far up as Fort Snelling, more or less?

Ans. 1. I do not. There was no year since I got my license that I didn't go up there several times, except the year 1864, and I am not positive to that. We carried a great deal of Government freight from La Crosse to Fort Snelling during the war. I remember one season three trips on the Wilson alone. We carried Government freight on her and her two barges. I was on some ten or fifteen different boats.

Ques. 2. Have you ever measured or do you know the exact distance between the piers, or do you know the exact width of your fleet?

Ans. 2. I do not; I never measured either.

Ques. 3. Is the steamboat Lady Pike now in existence, and can

133 you get the exact measurement over all, and is she as she was then? Where is she?

Ans. 3. She is. I can get the exact measurement over all, and she is the same now as then, as far as I know. She is laying at Dubuque.

Ques. 4. What do you know, if anything, about Mr. Grant's familiarity as pilot with the river between St. Paul & Fort Snelling, and for how long a time has he been familiar with it prior to the building of these

piers? What was his standing & reputation as a pilot in the year 1866?

Ans. 4. I know he was familiar with the river there before 1866. His standing & reputation as a pilot was very good in that part of the river.

Ques. 5. What was the character of the Lady Pike as to her steering capacity? How did she handle?

Ans. 5. Her steering apparatus was good. She steered easily and handled well.

Ques. 6. State whether the boat Lady Pike was owned by the same parties when the accident happened as she was when the suit was brought.

Ans. 6. She was not. At the time of the accident she was owned by parties in Cincinnati. At the time suit was brought she was owned by parties in Dubuque.

Further cross-examination

Ques. 1. Had you ever steered in partnership with Mr. Grant before this trip up and back?

Ans. 1. I never had, any more than an assistant steersman when I was learning the river. Mr. Grant learned me the first steering I ever did do.

Ques. 2. Did you ever steer in partnership with Mr. Grant as assistant steersman above St. Paul previous to this trip?

Ans. 2. I did not.

CORYDON LOONEY.

Exhibit "A."—(Marked "A.")

Know all men by these present' that we, Christopher W. Pearce and W. W. Hanly, owners of the steamboat Lady Pike at the time of an accident to a barge in tow of said boat, on or about April last, at
134 the piers of the railroad bridge above St. Paul, for and in consideration of one dollars, to us moving, from Corydon Looney, A. M. Grant, and A. C. Montfort, the receipt of which we acknowledge, do hereby release and discharge the said Looney and the said Grant & Monfort, and each of them, of and from any damage or claim of damage on the part of the owners of said st'b't Lady Pike, because of said injury and loss. The object of this release being to free them from any interest or supposed interest which they or either of them may have in any cause growing out of said loss or injury.

In testimony whereof we have hereunto set our hands and seals, at Cincinnati, Ohio, this first day of February, 1867.

C. G. PEARCE. [SEAL.]
W. W. HANLEY & CO. [SEAL.]

Marked "A."

Deposition of James Newton.

And the said JAMES NEWTON, being by me first carefully examined, cautioned, and sworn to testify the truth, the whole truth, and nothing but the truth, deposes and says:

Ques. 1st. State your residence and occupation, and how long and where have you followed it?

Ans. 1st. I reside at Gallipolis, Ohio, at present. I have been captain of the La Crosse and St. Paul Packet Company for the last five years.

Ques. 2. Are you familiar with the navigation of the river from St. Paul to Mendota?

Ans. 2. I am, sir. Mandota is right opposite Fort Snelling.

Ques. 3. What has been the usage on that river in reference to carrying grain in barges in bulk on that river, and how long has this usage prevailed, and, when carried in bulk that way, how are the barges equipped and moved, and by what class of boats is this done?

Ans. It has been the usage ever since I went there five years ago. The barges are loaded and towed by steamboats. They are not equipped for rowing or floating, but for towing altogether. All classes of boats tow these barges.

Ques. 4. Do you know the steamer Lady Pike; if so, how
135 did she compare in power and capacity for towing with the boats that usually tow out of the Minnesota River?

Ans. Well, good. She is better power than the general run of the boats that run up there. For towing three or four loaded barges she would be a boat of good power.

Ques. 5. Suppose the Pike had three barges (20) twenty feet in width each, and suppose those barges were fitted with sweeps for rowing & loaded with grain, which, in your opinion, would be the safest—to tow them through, or cut them loose and row them through, the river being high?

Ans. I would rather tow them through all the time; it is much the safest to tow them through, even if we had a rowing crew.

Ques. 6. Have you ever passed through these piers at the upper end of St. Paul—the piers in question—and how wide was your fleet?

Ans. 6. I have passed through there several times with barges. On one occasion it was about (125) one hundred and twenty-five feet wide.

Ques. 7. Between what piers do you pass down through?

Ans. 7. We leave the first pier that is out of water on the St. Paul side, on our larboard, as we come down; that is the channel of the river in low water.

Ques. 8. How long had you been navigating the western waters, and in what capacity, before you entered that trade?

Ans. I have been on the river for (31) thirty-one years, but acting as captain or engineer for the last twenty-five years, on the Ohio, Mississippi, and Missouri Rivers.

Ques. 9. Are you acquainted with the reputation, standing, and ability of Alex. M. Grant and Corydon Looney as pilots from La Crosse to Fort Snelling; and, if so, what was it in the year 1866?

Ans. Mr. Grant I do not know. Mr. Corydon Looney I am acquainted with. He has piloted for me; he is a good pilot and a number (1) one man. I wouldn't have the least hesitancy in giving him a boat having barges in tow to take them through those piers.

Ques. 10. When were the piers in question commenced, and what *are* the*re* condition now?

136 Ans. 10. I think they were commenced in the summer of 1865, and are not completed yet.

Cross-examination:

Ques. 1. Are you a licensed pilot on the Upper Mississippi and Minnesota Rivers?

Ans. 1. I am not, sir.

Ques. 2. Have you ever been a licensed pilot on any river?

Ans. 2. I am not. I profess to know the river about as well as any man, and could get a license if I wanted one.

Ques. 3. Has Corydon Looney ever piloted for you above St. Paul?

Ans. 3. No, sir; not that I recollect of.

Ques. 4. Have you ever been through these piers in charge of a boat?

Ans. 4. Yes, sir; I never went through no other way. I run the steamer Keokuk through there; she is the only boat I ever run through.

Ques. 5. Did you ever go through there with three loaded barges, two on one side and one on the other?

Ans. I never did, sir; I never had occasion to.

Ques. 6. How long have you been a captain from St. Paul to La Crosse, and how well acquainted are you with the pilots and captains in that trade?

Ans. I have been a captain in that trade for five years. I know most all of the captains and pilots in that trade; that is, most all of them in our line, the La Crosse & St. Paul packet line.

Ques. 7. Are you not acquainted with all of the steamboat men in that trade that are any account?

Ans. I know all the captains, but some of the pilots I am not acquainted with.

Ques. 8. How do you run from a mile above this bridge through the piers to where you begin to round to, to make a landing at the upper landing, at the upper end of St. Paul?

137 Ans. I have never used any rule. I have generally seen my pilots run slow, and hug the left-hand wall, the larboard wall we call it. They run slow until they got into them and then hug the larboard pier; that is, in order to avoid the other pier, which we can only tell at certain stages by the boil or break in the water; that is when we have a tow of two barges. When we have no tow it is not necessary to get so close to the wall, as we have plenty of room.

Ques. 9. When you went through with a fleet 125 feet wide, how far from the two piers were the outer edges of your fleet?

Ans. We struck the blind wall on one side, and if we had been right straight we wouldn't have struck either; but the wind was blowing, or we wouldn't have touched either; but we hit the blind pier with the starboard barge about ten feet from the end. The bows of the barges were hauled in at the head, and that throws them out at the stern, and makes it about 125 feet at the stern and 115 feet at the bow. If they had been close alongside they would have been about 115 feet over all.

Ques. 10. Is the railroad bridge at right angles with the current?

Ans. I don't think it is. I wouldn't answer that positive. I never surveyed it, and I never thought of it in reference to a law-suit.

Ques. 11. Do you navigate from a point a mile above straight down through these piers, at good boating stage, without checking your speed or changing your course, having two barges in tow on one side and one on the other?

Ans. I never noticed anything about it until we got down pretty close to the piers. When we got down there, if the wind is blowing and they see they are not going through straight, they stop and back out, or straighten her up in case the wind was blowing any. It is in that as it is with running the channel; when they can't run it right they stop and back, straighten up, be sure they are right, and then go ahead.

Re-examination:

138 Ques. 1. Was the boat Keokuk which you went through with, a side or stern wheel boat, and what difference would that make in your running between those piers, and for what reason?

Ans. She was a side-wheel boat. One reason is that with the power

the Keokuk had we can come down there and run slow, and we have the wheels to bring her into position besides the rudder, and wherein, with a stern-wheel boat in coming in, you have got to come in with speed to give her steerage-way; if you don't, if you undertake to back her, or to run slow, she is likely to swing round and double right round one pier or the other. You have nothing but the rudder to manage her with, and unless you have got headway you have got no command of her. With side-wheel boat you could float through and rub along by the side of one of the piers. You can back her and hold her in position with the wheels.

Ques. 2. What is the proper and best way to go through that bridge, with a stern-wheel boat and barges in tow, at high stages of water?

Ans. I would go through head-foremost with the whole fleet. That is the usage. There *is* no ring-bolts to drop boats through; it wasn't made for that purpose.

Ques. 3. With what speed, and where would you place your craft between the piers, and how would you approach?

Ans. I should come into it with speed enough to give me steerage, and I would endeavor to get my fleet as near the centre as I could. I would approach it straight from above and pass through it straight with the ordinary speed of the boat.

Ques. 4. Suppose you undertook to approach slow with a stern-wheel boat, or to back when a short distance above the piers, what, if any, danger would that present?

Ans. There would be danger of her flanking—what we call saddle-bagging the piers.

Ques. 5. How wide was the Keokuk over all, and what was her power?

139 Ans. She was about 55 feet over all: she had three boilers 26 feet long and 42 inches in diameter; cylinder 6-foot stroke and 20 inches in diameter; wheel 28 feet in diameter and 9½ feet long; she is a boat of great power, and the fastest steamboat that ever run up the Upper Mississippi; she ran only up to Mendota.

Ques. 6. You say you know all the captains and most of the pilots in your trade, that is, in the La Crosse and Paul trade; how many other traders are there that bring boats to St. Paul and Fort Snelling when they have business?

Ans. The Northern line boats from St. Louis, the Dubuque boats, the Dunlieth & St. Paul, the Savannah boats, and La Crosse and St. Paul transient boats from Pittsburgh and Cincinnati, go there when they have business. Boats from Priarie du Chien also go there.

Ques. 7. Do you pretend to know all the good pilots that run to St. Paul and to Fort Snelling when they have business?

Ans. No, sir, I do not.

Ques. 8. Is there any regular line of boats from below St. Paul to Fort Snelling?

Ans. No, there is not; all the boats go to Fort Snelling when they have business there.

Ques. 9. Is there or not any regular line ot boats running from Savannah, Illinois, up the Minnesota River; if not, how is the carrying, included in carrying in barges, in bulk from Shakopee and points on the Minnesota River to Savannah and points on the Mississippi below St. Paul done?

Ans. There is no regular line; it is done by transient boats that go up there on a contract for a load.

Ques. 10. Is there any regular line of boats running from St. Paul to Fort Snelling or Mendota, carrying freight?

Ans. There is not.

Ques. 11. How is the current at these piers; what direction as to being in line with the piers?

Ans. I think it is on a line with the piers.

Ques. 12. What was the length of the Keokuk, and what was the length and width of your two barges?

140 Ans. The Keokuk was about 183 feet long, fifty-five feet wide over all; one of the barges was about 145 feet in length and 32 feet beam; the other was about 135 by 30 feet.

JAMES NEWTON.

UNITED STATES OF AMERICA,
State of Ohio, County of Hamilton, ss:

I, W. Hayden Edwards, a notary public within and for the county and State aforesaid, appointed, and qualified, and commissioned as stated in the caption hereof, do hereby certify that the reason for taking the foregoing depositions is, and the fact is, that the said witnesses reside more than one hundred miles from Milwaukee, the place of trial of the cause for and in which the said depositions were taken, and that the same are necessary. I further certify that, in accordance with a verbal agreement between E. Mariner, att'y for libellants, and Lincoln, Smith & Wamock, att'ys for respondents, I notified Hoadley, Jackson & Johnson of the taking of the depositions, and they appeared and were present at the taking of the depositions and cross-examined. I further certify that on the 29th & 30th days of March, A. D. 1867, at the office of Lincoln, Smith & Wamock, in the said county and State, I was attended by Corydon Looney & James Newton, they being of sound mind and lawful age, and the said witnesses were each and all, previous to the commencement of their respective depositions, carefully examined and cautioned and solemnly sworn to testify the truth, the whole truth, and nothing but the truth, and the depositions hereinbefore appearing were by me reduced to writing in the presence of the said witnesses respectively, and were read over by me to the said witnesses respectively, and thereafter subscribed by the said witnesses respectively in my presence. I further certify that I am not of counsel, or attorney, or relative of either of the parties to the cause, or in any manner interested in the event of the said cause. All of which is here certified as to the reason for taking said depositions, and the manner in which they are taken.

141 In testimony whereof I have hereunto set my hand and official seal.

[SEAL.]

W. HAYDEN EDWARDS,
Notary Public, Hamilton Co., O.

Copy of protest.

(Copy protest.)

ST. PAUL, RAMSEY COUNTY, MINNESOTA,
24th April, 1866.

Personally appeared before me, O. F. Ford, a justice of the peace in & for Ramsey County, Minnesota, A. C. Monfort, master of the steamer Lady Pike, Alexander M. Grant and Corydon Looney, pilots, Peter Connolly, engineer, Jerry Pursinger, mate, all officers of the steamer Lady Pike, who, being duly sworn, deposes on oath, viz: That said steamer Lady Pike,

being fully officered, ma'ned, & equip'ed according to law, left Shakopee, Scott County, State of Minnesota, on the morning of April 24th, 1866, having in tow three barges loaded with grain, (wheat.) She proceeded in her way without accident to boat or barges until within about three miles of St. Paul. While under way, the barge Salmon, said to contain six thousand seven hundred & fifty-three bushels of wheat, struck one of the middle piers of a railroad bridge in course of construction across the Mississippi River, and, after all exertions of officers and crew of said Lady Pike, said barge sunk about two miles above St. Paul, where she now lays. Now, therefore, I, A. C. Monfort, master of said Lady Pike, do most solemnly protest, in behalf of the owners of the said steamer, against all claims, owners, shippers, or consignees of said barge and grain.

(Signed) A. C. MONFORT.
ALEXANDER M. GRANT.
CORYDON LOONEY.
P. CONNELLY.
J. PURSINGER.

On this 24th day of April, 1866, before me, O. F. Ford, a justice of the peace, duly qualified and acting as a justice of the peace in the county of Ramsey and city of St. Paul, Minn., came personally A. C. Monford, Alex. M. Grant, C. Looney, Peter Connelly, and Jerry Pursinger, the persons named in the foregoing, and being each by me severally sworn, did depose and say that the foregoing declaration by them signed was true of their own knowledge.

OSCAR F. FORD,
Justice of the Peace in and for Ramsey Co., Minn.

142 STATE OF MINNESOTA,
County of Ramsey, ss :

I hereby certify that the foregoing to be a true copy of the origina instrument of protest taken before me.

St. Paul, April 26, 1866.

OSCAR F. FORD,
Justice of the Peace.

[5-cent stamp can'd.]

STATE OF MINNESOTA,
County of Ramsey, ss :

I, Albert Armstrong, clerk of the district court for the second judicial district and county of Ramsey aforesaid, the same being a court of record, do hereby certify that Oscar F. Ford, esq'r, before whom the annexed affidavits were taken, was, at the time of taking the same, a justice of the peace in and for said county, elected and sworn, and duly authorized to take the same; that I am well acquainted with the hand-writing of such officer, and verily believe that the signature to the jurat to said affidavit & certificate are genuine. I further certify that the annexed instrument is executed and certified according to the laws of this State.

Witness my hand and the seal of said court at St. Paul, this 29th day of April, A. D. 1869.

[SEAL.] ALBERT ARMSTRONG, *Clerk.*

[5-cent stamp cancelled.]

Affidavit of W. P. Warner.

In the district court of the United States for the district of Wisconsin.

THE GERMANIA INSURANCE COMPANY ET als., libellants,
against
THE STEAMBOAT LADY PIKE, WILLIAM Knight et als., claimants.
} In admirality.

DISTRICT OF MINNESOTA, *ss:*

W. P. Warner, after being duly sworn, deposes and says that he has been employed by the claimants in the above-entitled cause, with the consent and at the instance of the proctors of said claimants, to attend to the taking of the depositions of the witnesses hereinafter named on behalf of said claimants in said cause. That he is familiar with the issues in said cause and the circumstances attending the accident
143 and loss in question in this suit. That the testimony of every one of the persons witnesses hereinafter named is material and necessary to the defense of said claimants in said cause.

That Orin Curtis, John Haycock, Edwin Bell, Louis Krieger, and Captain Wilson reside at Saint Paul, in said district of Minnesota; that Elliott Haycock resides at Minneapolis, in the district of Minnesota; that George & James Houghton reside at Carver County, and Alexander Griggs at Sibley County; all in said district.

That each and every of said persons reside at a greater distance than one hundred miles from the place of trial of said cause, the city of Milwaukee, in the State of Wisconsin; that the libellants in said suit are companies of New York State, and have no agent or officer within one hundred miles of Saint Paul, in the district of Minnesota, upon whom notice of the taking of such depositions can be served; and the proctor of said libellants, by name E. Mariner, resides at said city of Milwaukee, more than one hundred miles from said S't Paul, and there is no person within one hundred miles of said S't Paul upon whom, to the knowledge of affiant, notice of the taking of such depositions can be served.

And further deponent saith not, save that this affidavit is made to obtain an order for the taking of the depositions of said witnesses without notice, as provided by law and the rules and practice of said district court.

W. P. WARNER.

Sworn to & subscribed before me March 5th, A. D. 1869.
H. E. MANN,
U. S. Commissioner.

Let the witnesses named in the foregoing affidavit be examined de bene esse before me, accordingly, at my office in the city of S't Paul, in the State of Minnesota, at 2 o'clock in the afternoon, on the 19th day of March, A. D. 1869.

H. E. MANN,
U. S. Commissioner.

144 In the district court of the United States for the district of Wisconsin.

THE GERMANIA INSURANCE COMPANY ET ALS., libellants, *ag'st* THE STEAMBOAT LADY PIKE, WILLIAM KNIGHT claimant. } In admiralty.

SIR: You are hereby notified that John Haycock, Elliott, Haycock, George & James Houghton, Alexander Griggs, Orin Curtiss, Edwin Bell, John F. Luckey, Louis Krieger, Capt. Wilson, will be severally examined before me, de bene esse, at my office in Saint Paul, in the State of Minnesota, at 2 o'clock in the afternoon, on the 19th day of March, A. D. 1869, as witnesses for the claimants in the above-entitled action; at which time and place you are entitled to appear and cross-examine such witnesses if you like.

H. E. MANN,
U. S. Commissioner, Dist. Minnesota.

E. MARINER, *Proctor for Libellant.*

Service of copy admitted March 8, 1869.
E. MARINER, *Proctor for Libellant.*

UNITED STATES OF AMERICA,
District of Minnesota, ss:

Be it remembered that on the 5th day of March, A. D. 1869, application was made to me, H. E. Mann, a commissioner of the circuit court of the United States of America for the district of Minnesota, duly appointed under the laws of the United States to take affidavits and acknowledgment of bail, upon the affidavit of W. P. Warner, hereto attached, and I was requested, in behalf of the claimants in said affidavit mentioned, that the said witnesses therein named might be examined according to the directions of the act of Congress in such case made and provided. Whereupon I made the order attached to said affidavit, and to the end that the libellants might, if they saw fit, be present at the examination of such witnesses, and put questions to them, I issued the notice hereto attached, and, having due proof that said notice was duly served on the libellant and the said claimants by the said W. P. Warner ap-
145 pearing before me, I have therefore proceeded with such examination; and the witnesses hereinafter named appearing before me also at S't Paul, Minnesota, at my office, were each by me duly cautioned, examined, and sworn, and testified as below, and at the times below stated, and the following proceedings were had, to wit, March 19th, A. D. 1869, at 2 o'clock p. m.:

Deposition of James Houghton.

JAMES HOUGHTON, a witness procured on the part of the claimants and respondents, being first duly sworn, says:

I reside in Carver County, Minnesota, more than one hundred miles from Milwaukee, Wisconsin. I am a pilot; been one for ten years on the Minnesota River, running boats between S't Paul and different points on the Minnesota River; have been licensed to run from S't Paul to Carver, on the Minnesota River, for 10 years, some portion of that time on the whole river; have been actually engaged in that business during that

whole time every season. I am familiar with the channel of the Mississippi River between S't Paul and Mendota. There is only one railroad bridge completed or in process of construction between S't Paul and Mendota, and that is still unfinished. The abutments of that bridge I should judge have been there four years. Prior to the spring of last season the usual channel for steamboats passing up or down the Mississippi River passed this bridge between the first and second piers from the turn-table pier toward the S't Paul shore. The channel was wider between those piers than between the turn-table pier and the first pier. I recollect the fact of the sinking of a barge belonging to the steamboat Lady Pike. When I first saw the barge it was on the shore, about half a mile below the bridge. I have seen the Lady Pike. She was a stern-wheel boat; common or medium sized boat. From what I have seen her towing around, she appeared to tow well. The current by the bridge is not strong; not stronger than any other part of the river. I have taken three barges through the bridge with a steamer. I have taken 3 through abreast, side by side; have taken 2 large barges and one small one. When there was no wind I should not think it was very
146 risky to take three barges through together abreast. I have taken through there a tow of the width of between 90 and 100 feet. I should judge the distance in the clear, in the wide space, where we used to run before last spring, was about 140 feet. When the water was high the 2d pier from the turn-table pier was under water. The piers on each side of this were both out. During the last season boats have usually run between the turn-table pier and the one next to it on the S't Paul side. This change was made because a barge was sunk in the former channel, making it narrow.

Question. State whether or no it would have been judicious in calm weather to come down through this bridge with a tow of about 90 feet in width, composed of a stern-wheel steamboat and 3 barges, laden with wheat.

Answer. I think it would. I have never taken so wide a tow down, but I think it could be done. I have frequently taken as wide a tow up; and it would be all the same, up or down. In windy weather there would be a risk; with a side wind there would be a risk; with a hard side wind there would be a risk. If the boats were heavily laden it would require more wind to make it risky than if they were light, because if they were heavily laden it would take more wind to affect them. The danger arises from being blown against a pier and crushing the boat. I never met with any accident or trouble at that point. When the wind was blowing very hard we would have to lay up with barges, or in the night; would not have to lay up if we had no barges; I mean a side wind; no other would do any harm. At the time the barge of the Lady Pike was sunk there was plenty of water anywhere through the bridge for navigation. She could not have found less than ten feet of water anywhere there by the bridge. If I were coming down, and the wind was blowing from the side, I would go on the opposite side of the sunken pier from the wind, because there would not be so much risk in blowing against a pier out of water as under water.

JAMES HOUGHTON.

147 *Deposition of George Houghton.*

GEORGE HOUGHTON, a witness produced on the part of the claimants and respondents, being first duly sworn, says:

I am a pilot; have been one eight or nine years. I reside at Carver County, Minnesota. I am familiar with the channel of the Mis-

sissippi River between S't Paul and Mendota. I know where the piers of the railroad bridge are between S't Paul and Mendota. There is only one bridge between S't Paul and Mendota, and that is in process of construction. The piers have been there some five years. I recollect the fact of one of the barges of the steamboat Lady Pike sinking there near this bridge. I first saw the barge, after the accident, below the bridge on the S't Paul side, about ½ mile below. I think I saw her landed there after she struck the pier. I think I was there that day, in S't Paul, on the levy. I think the wind did not blow any of any consequence when the barge was landed. I cannot remember distinctly about it; it is only my impression. The water was what you might call high water, at that time. I think there was plenty of water to navigate between any of the piers.

Question. How wide a tow could be taken through the bridge at that time down with safety?

Answer. 80 or 90 feet at a calm time. If there was a heavy wind, there would be more or less danger. There would be more danger with a side wind than with a head or stern wind. If the tow was loaded, a light wind would not affect it. The distance between the piers, in the clear, except between the turn-table pier and the one each side, is 130 to 140 feet. That is my judgment on it. The danger in going through consists in running against the piers. That is all the danger there is. There are no rocks there; only those in the piers. I have taken up a tow of three barges abreast through the bridge often. I think there is a little more danger coming down than going up, because you can go up into it slower than coming down; the difference is on account of the current. The current is not swift there; about the same as other parts of the river. I have seen the steamer Lady Pike. I should judge she towed very well. I know by having seen her handling barges
148 around in the river. I have never had any trouble or accidents myself at that point. To my best recollection, on the day of the accident the wind did not blow hard enough so but what I would have come through. I have been a licensed pilot over that portion of river 8 or 9 years. It was customary at that time for boats plying between S't Paul and points below, on the Mississippi River, to run up to Mendota and Fort Snelling. They frequently went there. I think they did not change their pilots at S't Paul. The river was good between St. Paul & Mendota. I have had considerable experience in going through the bridge, more or less, every year.

GEO. HOUGHTON.

Deposition of Alex'r Griggs.

ALEXANDER GRIGGS, a witness produced on the part of the claimants and respondents, being first duly sworn, says:

I reside at Henderson, Minnesota, more than one hundred miles from Milwaukee. Am a pilot; have been one, more or less, for 15 years; have been a licensed pilot not quite five years; it lacks about 3 months. From S't Paul, on Mississippi River, to Redwood, on the Minnesota River, have been actively engaged in that business, more or less, for 15 years. I do not run in that capacity all the time; sometimes as captain, sometimes as mate. Out of the 15 years, I have been on the river nine or ten years. I am familiar with the channel of the river between S't Paul and Mendota. I recollect the fact of the accident to one of the Lady Pike's barges near the bridge above S't Paul. I was on the steamboat Chippeway Falls that day, going up the river from

S't Paul. I was about a mile below the railroad bridge at the time of the accident. When I first noticed the Lady Pike she was apparently still, that is, her machinery, and below the bridge; probably a hundred yards below. I should judge, from the commotion on the boat, that the crew were trying to save the barge. I could see they were working with tarpaulins, and undoubtedly trying to save the barge. About the time we met the Lady Pike she was a going ashore with the barge. I should judge about half a mile below the piers, on the S't Paul shore, she run the barge ashore, and when I went out of sight she was
149 still lying there with the barge. I ran on up through the bridge. I do not recollect of having any tow at that time; I might have had a barge or two. I had no difficulty in getting through the piers. The water was at a good fair stage; it was high; high enough for any loaded barges. At the time I first saw the Lady Pike the wind was not blowing very hard. I think this was in the afternoon, but cannot state positively. I don't think the wind had been blowing all day; but I could not positively tell, because I was busy on the levee, and did not pay any attention to the wind previous to my starting out. I think the Lady Pike had two barges besides the one which was injured; cannot state positively. If I had been piloting the Lady Pike with her tow at that time I should not have laid up, but come through as she did, provided she was in good running order. The wind was not so high as to render it improper for her to attempt to come through at that time at that stage of water, if she was not in any way disabled. I should judge the Lady Pike was a good tow-boat. I judge from seeing her towing and handling tows in the river.

Question. State your experience in piloting tows through these piers.

——— I have frequently run through the piers with a tow. I have towed 9 barges, 4 abreast, up stream through between these piers; that is, two on each side of the steamer, abreast. I have done this more than once; don't recollect how many times; have come down between these piers with three barges loaded abreast, besides the steamboat, with the wind blowing, but not very hard; about the same as the wind was at the time of this accident. I have run through, coming down, with two large, heavily loaded barges in the night, when it was snowing and the wind blowing harder than it was the day when this accident occurred. In coming down, the bank on the St. Paul side is high—higher than any steamboat. Above the piers, as one gets down near to and opposite the pier, and from there below, the shore is low and the bluff is further back from the channel. The right-hand shore,
150 coming down, is low and flat. The wind has a better sweep at and below the piers than it does above, especially if the wind is blowing from the north. In coming down I have never laid up for the piers; have come through when the wind was blowing hard, with a a tow. The Lady Pike was a better tow-boat than we usually have on this end of the river.

ALEX. GRIGGS.

Whereupon further proceedings were necessarily adjourned until March 20th, 1869, 10 a. m.

Further dep'n of Geo. Houghton.

MARCH 20, 1869, 10 a. m.—Pursuant to adjournment, W. P. Warner, esq., appeared for the claimant & respondents, no one appearing for libellants.

Whereupon GEORGE HOUGHTON, a witness heretofore produced on the part of the claimants and respondents, being recalled, further says

The shore of the river on the S't Paul side, from the upper landing at S't Paul to about a quarter of a mile above the piers of the railroad bridge, is substantially level and exposed, and the higher ground is some distance back, but about a quarter of a mile above the piers. On the S't Paul side the shore suddenly becomes a bluff, from 50 to 75 feet high, and the channel runs along under or at the foot of this bluff, for about a half or ¾ of a mile; and about a quarter of a mile below the piers the bluff on the other shore is very high and steep, and comes out to the channel or bank of the river, but at that place it at once commences to recede from the river, so that opposite the piers there is a bottom about a quarter or half a mile wide, which grows wider as one goes up the river, and in this bottom is Pickerel Lake, lying nearly opposite the bridge. I have often found in coming down the river, along this place, that along under this bluff shore above the bridge we would not feel or notice wind, but on shooting out from under this bluff, along the channel diagonally down across the river to the point of the bluff on the other shore below the bridge, we would sometimes find the wind
151 very high when we didn't expect it. After leaving this bluff for the piers it is very difficult to get back, and it is more dangerous at any time during the wind to attempt to get back than to go on through between the piers when having heavily loaded barges, because in trying to back up we would loose the steerage-way, and be liable to drift sidewise on to the piers, broadside to the current, which would be fatal. I remember once, in particular, coming down the river with the steamer Ariel, towing steamer Albany and three barges, two barges and the Albany abreast with the Ariel, coming down above, we thought we had a calm time to come through the piers. After leaving the bluff and coming out near the piers the wind was blowing hard, and I feared we should not get through in safety on that account, but still we came through without any damage being done. Mr. Alexander Griggs was pilot at the time. I recollect other similar instances. In the instance I have given we did not discuss going back, as it was impossible.

GEO. HOUGHTON.

Further dep'n of Alex'r Griggs.

ALEXANDER GRIGGS, being recalled, says:

I have heard the testimony of Geo. Houghton given to-day about the situation of the channel of the river above and below the bridge, and also in relation to the steamer Ariel coming through, and such testimony is true. I recollect distinctly the incident which he gives, and all the circumstances.

ALEX. GRIGGS.

Deposition of Edwin Bell.

EDWIN BELL, a witness produced on the part of the claimants and respondents, being first duly sworn, says:

I reside at S't Paul, Minn., more than one hundred miles from Milwaukee, Wis. My business is steamboating; have been engaged at it since 1855, on the Minnesota and Mississippi Rivers. I am now assistant superintendent of the Minnesota River improvement, or was to January last. I have been familiar with the Mississippi River between St. Paul and Mendota for about 14 years; have been over it more or less

every year but one since 1855. From a point about a quarter of a mile below the railroad bridge which is being built immediately
152 above S't Paul, across the Mississippi River, to Mendota, there is a continuous bluff, not less than 150 feet high, along at the left of the river going up, and that comes right up the channel of the river at the point a quarter of a mile below the bridge, and then, rapidly receding from the river to the left, leaves a bottom that is about one-half a mile wide opposite the bridge, and which continues about that width for about two miles, when it gradually gets narrower until the bluff comes out to the channel of the river again. In this bottom, about opposite to the bridge, is a large lake, called Pickerel Lake. In going up the river the channel from this point below the bridge, where the bluff comes out to it, runs along that shore until within about 20 yards of the piers, and then up diagonally through the piers so as to strike the St. Paul shore about a quarter of a mile above the bridge, and at this point there commences a perpendicular rocky bluff about 50 feet high, and the channel keeps along under and at the foot of this bluff for about ¾ of a mile. Many a time, coming down, I have noticed no wind until leaving the rocky bluff above the bridge, and have then sometimes found high wind thrown across the river by the right-hand bluff. You cannot always tell, before leaving this bluff, whether you will find wind or no, or how high it will be. If one starts from this bluff to come down through the bridge in time of too much wind, if he got too near the piers it would be dangerous to try to get back more than to come through, because it takes a boat a long time to pick up her headway, and she would be as likely to back one way as another, and be liable to saddle-bag on the pier; stern-wheel boat, when there is wind, you cannot back straight; you cannot back her where you want her. I have see' the steamer Lady Pike, whose barge met with an accident at this bridge; it was in 1866, I think, the accident was. I consider her a very good tow-boat. I consider her better than the generality of Min-
153 nesota River boats. I should think she was competent to tow three loaded barges down stream. I have seen a steamer with three barges abreast go through this bridge. There is no doubt there is room enough, but I never had occasion to take three through abreast myself. Some boats handle barges better one way, some another. I saw the Lady Pike immediately after she came through between the piers of the bridge at the time of the accident, at the time she was beaching her barge. It occurs to me there was not much of a blow that day. I know there was not a heavy blow; I recollect this distinctly. It occurred to me at once that I should have had no hesitancy in running through at that time. I have never met with any accident coming through since the piers have been built. I have run from S't Paul to Mendota, in connection with the Valley R. R., and on an average have passed through between those piers three times a day during the time I run there; was my own pilot.

EDWIN BELL.

Adjourned necessarily until March 24, 10, A. D. 1869.

March 24, 1869, 10 a. m., W. P. Warner, esq., appeared for claimants and respondents, no one appearing for libellants; whereupon—

Deposition of Louis Krieger.

LOUIS KRIEGER, a witness produced on the part of the claimants and respondents, being first duly sworn, says:

I reside in the city of S't Paul, Minn., more than 100 miles from Milwaukee,

Wisconsin. I am the part owner of a lumber-yard, and dealing in lumber at S't Paul, have been in that business nearly a year. Before that I was in the commission business, also dealing in grain. I superintended the saving of the wheat which I took from a bulk barge that I understood was sunk by the Lady Pike near the piers of the railroad bridge between S't Paul & Mendoto. I think this was three years ago this spring. Mr. Owen Curtis, of S't Paul, insurance agent, employed me. I should think it was the third or fourth day after the barge sunk that I went to work on it; but I cannot tell precisely about dates. I think I had 5 or 6 men
154 with me when I went to work. At the time I went to work one end of the barge was under water, and the other was some little out of water. I first commenced to get out such wheat as I thought was worth saving. I got out somewhat over 200 bushels of good wheat dry that was at the part of the barge the water had not reached. It was all over the top, except about 20 feet at the stern of the boat; this 20 feet at the stern was all under water. I saved all the wheat that I could which was dry. It took us two days and a part of the third day to get out this dry wheat. We had to scrape it up with hands and buckets. After I got out all the good wheat, I went to work and got out some of the wet wheat. It was kept entirely separate from the good wheat. It was warm, sunshiny weather then; I think it was in the month of May; I will not be positive; it was hot weather. It was so warm that the wheat *het* amazingly; that is, the damaged wheat. I threw the wet wheat into an open barge with shovels. I think we used 2 barges. We shoveled out 5 or 6, and may be seven hundred bushels. This wheat, which we threw out, spoiled completely in two or three hours after we threw it out. That is the reason we finally abandoned the job. I think we might have had 2 or 3 men more at work than I have stated. I rendered a bill to Curtis of all, both my time, the men employed, and the tools. He paid me. The good wheat was sold to myself & partner; it brought near the market price. The wet wheat was sold, I understood, for hog-feed, and our firm was the highest bidder for the good wheat. I went to work on the barge the same day Curtis employed me. The barge was on a sand-bar when I was at work on her, on the S't Paul shore.

LOUIS KRIEGER.

Adjourned until March 27, 1869, 10 a. m.

MARCH 27, 1869, 10 a. m.—Same parties appearing, examination of witness resumed.

Deposition of William Constans.

Whereupon WILLIAM CONSTANS, a witness produced on the part of the claimants and respondents, being first duly sworn, says:

I have resided at S't Paul, Minn., since 1850; have been en-
155 gaged in wholesale grocery and forwarding & commission business. I know Capt. Monfort. In the spring of 1866 he was in command of the steamboat Lady Pike. I recollect of one of the wheat barges of that boat coming in collision with one of the piers of the railroad bridge between S't Paul and Mendoto in the spring of 1866. It was on the 24th day of April, in the afternoon of that day. The Lady Pike was laying about 200 feet below my store on the levee, in S't Paul, and the capt. was looking for me for some time. I was out. I went aboard the boat, and the capt. told me he wanted to make a protest

about this barge and information for that purpose. We then went to Justice Ford's office, and a protest was made in my presence. Then the capt. wanted me to take charge of this barge, save the wheat, and do the best I could with it. This was while the protest was being prepared. After the protest was finished we met L. B. Gregg, who represented to the capt. that he was agent of the line in which the Lady Pike was running, at St. Paul, and who had acted as such agent; whereupon the capt. concluded to turn it over to him, as he was the proper person, being the agent of the line. The capt. then told Mr. Gregg to take charge of it, to go right to work, and do the best he could with the wheat. Mr. Gregg promised to do so; after that was done the capt left with his boat, and went down the river. I know of no business then carried on in St. Paul in which wet wheat could be used. The weather turned very warm immediately after this accident. The water was very high at the time. Mr. Gregg was then in the brewery and distilling business at St. Paul, besides acting as agent for the boats.

W'M CONSTANS.

Necessarily adjourned until April 1st, 1869, at 10 a. m.

April 1st, 1869, 10 a. m., same parties appeared, and examination of witnesses resumed.

Deposition of L. B. Gregg.

Whereupon L. B. GREGG, a witness produced on the part of respondents and claimants, being first duly sworn, says:

My name is L. B. Gregg. I reside at S't Paul, more than 100 miles from Milwaukee. I knew the steamboat Lady Pike. I recollect of
156 an accident that she met with at the piers of the railroad bridge between S't Paul & Mendota, about the 24th day of April, 1866. The first notice I had of it was the general rumor on the day of the accident. I saw the capt. of the boat the same day. His name was Monfort. I saw him on board the Lady Pike in the afternoon or evening, I think, here in S't Paul. He told me he had sunk a barge, and had taken every precaution—had tied it up to the bank—and wanted me to see to it, which I did. I went up there the first morning about 9 or 10 o'clock. I found the boat tied up as well as it could be, and a Frenchman in charge. It was partly in water and part out. I went on board the boat. The wheat was all wet, as far as I knew. The insurance people took charge of it after that. Duffy and Anderson were notified that night, I believe. They came down here the next day or day after. I could not get to the barge at the time with teams. The wheat could not be drawn away with teams. I could not get out to it with my buggy. The water was high. Between the barge and the high ground there was a wide bottom, with a slough next the high ground. When the water is high this slough is full of water. I think I bought the wet wheat in the barge as it lay. This was the 2d or third day after the accident. I bought it of Orin Curtis. He was acting for the insurance companies. I don't recollect what I paid for it. It was under a hundred dollars; that is my best recollection. I sold it to Alexander McAuley. I know he fed some of it to pigs. I did not buy it all. There was a little dry that was sacked which I did not get. It was on the end of the boat on shore. I thought I paid for the wheat all it was worth. I bought it for the purpose of drying and distilling it, but my distiller said it was worthless for that purpose, and I concluded at the

time it would not do, and for that reason I resold. I was engaged at that time in the distilling business; had the largest distillery at that time in St. Paul. Other parties made bids for the wheat, and I
157 got the wheat. I think they commenced to get the dry wheat out of the barge the next day or the day after. There was no business at that time in which wet wheat could be used, except distilling and for feed for hogs. I think there was another barge sunk about the same time at the same place. At that time there was no facilities for drying wheat, and it could only be used for feeding pigs & stock. I thought when I first saw this wheat it was not worth taking out.

L. B. GREG.

And I do further certify that the preceding depositions were reduced to writing by me, and, after thus being reduced to writing, were by me carefully read to the respective witnesses; and each witness signed his deposition in my presence; that each of said witnesses reside more than 100 miles from Milwaukee, Wis.; that I am not of counsel or attorney for either of the parties to said suit, nor am I interested in the event thereof.

H. E. MANN,
U. S. Commissioner, Dist. Minnesota.

DISTRICT OF MINNESOTA, *ss:*

I, H. E. Mann, clerk of the circuit court of the United States for the district of Minnesota, do hereby certify that H. E. Mann, whose name appears to the above certificate, is now, and at the time the foregoing depositions were taken was, a commissioner of this court, duly appointed, qualified, and acting as such, and that his signature to said certificate is genuine.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, this 8th day of March, 1869.

[SEAL.] H. E. MANN, *Clerk.*

Commissioner's fees, $19.25.

[District court of the United States for the district of Wisconsin.

GERMANIA INSURANCE CO. ET AL., LIBELLANTS,
vs.
STEAMBOAT & BARGE SALMON, RESPONDENTS.

Depositions of R. S. Harris, Jno. M. Secrist, Jno. Beattie,
158 S. P. Hill, and Jno. N. Christy, in behalf of the claimants.

UNITED STATES OF AMERICA,
State of Ohio, County of Hamilton:

Be it remembered that on the 27th & 28th days of May, A. D. 1869, before me, R. S. Fulton, a United States commissioner for the southern district of Ohio, duly appointed, qualified, and commissioned, and acting as such, and duly authorized, under and by virtue of the laws of the laws of the United States, to take depositions to be used in the courts of the United States, personally appeared, at the law office of Lincoln, Smith & Warnock, in Cincinnati, in the said county and State, R. S. Harris, Jno. M. Secrist, John Beattie, S. P. Hill, and Jno. W. Christy, each and all of sound mind and lawful age, witnesses in behalf of the

claimants in a certain cause pending in the United States district court for the district of Wisconsin, wherein the Germania Insurance Company et al. are libellants, and the st'b't Lady Pike & barge Salmon are respondents.

Deposition of R. S. Harris.

R. S. HARRIS, of sound mind and lawful age, being by me first duly examined, cautioned, and solemnly sworn to testify the truth, the whole truth, and nothing but the truth, deposes as follows:

Examination-in-chief:

1. Int. State your name, age, residence, and occupation; how long you have followed your occupation, and where.

Ans. Robert S. Harris is my name. My age is fifty-five, or thereabouts; residence, Dubuque, Iowa; and have been a steamboat captain and owner for a number of years on the Upper Mississippi River. I have been steamboat captain and owner since the year 1833. I ran the first packet that went up to S't Paul, and have been captain, owner, and officer in the packet lines there ever since, and have been extensively engaged in boating on the Upper Mississippi ever since.

2. Int. Are you acquainted with the railroad draw-bridge near the upper part of S't Paul; and, if so, state whether or not you have ever passed through it on steamers with barge or barges in tow, & how do they generally come through?

159 Ans. I am acquainted with the railroad bridge near the upper part of S't Paul, and it is within the limits of the city of S't Paul, as I have always understood while there. I have been there very often. I have passed through it on steamers with barge or barges in tow. Our pilots have always come through with whatever tow they had. I never knew or heard of their dropping through. In approaching it with a stern-wheel boat I should do so under an ordinary head of steam, to handle her well. I wouldn't approach that draw under a slow-bell, because you can't handle her well unless she is under some headway, and it would be very dangerous to back as you are about to enter, or are partly in, because you would be likely to throw her around on the piers, if under slow-bell or otherwise. In backing a stern-wheel boat there is no telling which way she will go, and that is particularly so if she has barges in tow.

3d. int. To what extent have you had experience w th sunken wheat on the Upper Mississippi River, and of the difference in damage which would be caused whether the same remained under water half a day or three days in the spring of the year and as high up as St. Paul?

Ans. I have been interested in several barges sunk in that way, with the little facilities they have on the Upper Mississippi for saving sunken wheat. I should consider it of little difference whether the wheat has been sunk half a day or three days, for it is substantially a total loss after once it is covered over with water. Being in bulk it is very hard to handle, and it would be very difficult to get it out at all, and would take a long time. If they had facilities for drying it, the sooner it was got out the better, but they have no such facilities on the Upper Mississippi, for we have often enquired, and our company had in contemplation the building of a drying-machine for this purpose, but we never did so. We have from time to time sunk barges of wheat in the river from St. Paul to Galena, and this matter has often come before us, and I feel familiar with it. We have never been able to my knowledge to save anything from a cargo of sunken wheat.

4th int. Are you acquainted with Corydon Looney and Alexander M. Grant, who were pilots of the steamboat Lady Pike in April, 1866,
160 when she sunk a barge of wheat at the bridge before named; and, if so, what is their standing and ability as pilots from Galena to the mouth of the Minnesota River?

Ans. I am acquainted with them, and they are good pilots, and are so considered.

5th. int. When a pilot has his papers from Galena to St. Paul, how far by the usage and custom since the law of 1852 was enacted, have they been permitted to go?

Ans. To the mouth of the Minnesota River, and that has always been the custom.

6th. int. What do you say as to the prudence or imprudence of passing down through the draw to the left of the pier in the day-time with the steamer Lady Pike, with three barges in tow, the whole fleat measuring from 92 to 95 feet across, when there is no wind prevailing to affect the handling of the boat?

Ans. I should consider it prudent to try to go through. It is not customary to drop barges through, for they are not provided with oars, or other means of being handled; they are made for towing. I knew the Lady Pike and her barges, and the power they had.

7th int. Have you any interest in this suit, and how came you to give your evidence?

Ans. I have no interest in this suit. I came to Cincinnati on other business, met Capt. Pearce, and was requested by him to give my deposition. It is wholly accidental and unexpected.

ROBERT S. HARRIS.

Deposition of John M. Secrist.

JOHN M. SECRIST, being by me first duly sworn to testify the truth, the whole truth, and nothing but the truth, and being of sound mind and lawful age, deposes and says as follows:

Examination-in-chief:

1 int. State your name, age, residence, and occupation, how long you have followed your occuption, and where.

Ans. My name is John M. Secrist; my age is forty-one; residence, Glenn Grove, Hamilton County, Ohio. I do business in Cincinnati. I am in the grain business in Cin'ti, and have been for about twenty years.

2d int. Have you had any experience in handling grain sunken in any of the western rivers, and do you know what is the effect of its lying in the water?

161 Ans. I have had experience in handling grain sunken in western rivers. Have handled several lots of sunken grain.

3d int. What would be the difference in the damage in a lot of grain lying sunk in the river at St. Paul, in April, whether for a half a day or for three days?

Ans. I think the difference would be but little so long as it would be under water.

4th int. What is the value of wheat and other grain that has once been under water where there is small demand for it, and no convenience such as kiln-drying establishments for curing and handling it previously prepared?

Ans. Of very little value, I should think. I had a boat-load of oats

myself which was sunk at Clarksville bridge, in the Cumberland River, at Clarksville, Tennessee, and we had to sell it for ten cents per bag, and there were four bushels in each bag, and we could have got one dollar and thirteen cents ($1.13) per bushel for sound oats at Nashville, some sixty miles above, at that time. Sunken grain is a very ugly thing to handle, especially if sunk in bulk. If it is near a large city where there is demand for it, like Cincinnati, St. Louis, or Chicago, and where there are means for curing and handling it, it is of considerable value. But at small places like Nashville or St. Paul, I think it would be of very little value.

JOHN M. SECRIST.

Deposition of John Beattie.

JOHN BEATTIE, of sound mind and lawful age, being by me first duly sworn to testify the truth, the whole truth, and nothing but the truth, deposes as follows, to wit:

Examination-in-chief:

1 int. State your name, age, residence, and occupation, and how long and where you have followed your occupation.

Ans. My name is John Beattie; am fifty-five to-day; residence 170 Longworth st., Cincinnati; am a commission merchant by occupation, and have been a dealer in grain here in Cincinnati thirty-five years. I have flat-boated from Cincinnati to New Orleans fourteen years and a half.

2nd. int. Are you acquainted with the construction of barges for carrying grain in bulk on the Upper Mississippi; if so, what is the mode in which they are constructed?

162 Ans. It is a model barge, built like the hull of a steamboat, with a caulked deck on it, and with two hatches, one fore and one aft. Some of them have cargo-boxes built on deck, and some don't. The bulk grain is carried in the hold. I am acquainted with the mode of construction.

3d. int. Suppose a barge-load of wheat was sunk under water in bulk, what, if any, difficulty would there be in getting it out, and to what extent would it be valuable unless it was near a place where they had conveniences for curing and handling wet grain?

Ans. It would be an ugly, difficult job to get it out; and it would be worth little or nothing in my estimation unless they had conveniences for handling and curing it. If it was near a large city like Cincinnati, St. Louis, or Chicago, it would be of considerable value.

JOHN BEATTIE.

The full taking of these depositions is continued until to-morrow, May 28th, A. D. 1869.

R. S. FULTON,
U. S. Commissioner.

The further taking of these depositions is continued pursuant to adjournment of yesterday.

R. S. FULTON,
U. S. C.

Deposition of Selwyn P. Hill.

SELWYN P. HILL, being of sound mind and lawful age, and by me first duly examined, and cautioned and solemnly sworn to tell the truth, the whole truth, and nothing but the truth, deposes as follows:

Examination-in-chief:

1 int. State your name, age, residence, and occupation, how long you have followed your occupation, and where.

Ans. Selwyn P. Hall is my name; age, thirty-nine; residence, Cincinnati; am a commission merchant and dealer in grain by occupation, and have followed that business here in Cincinnati about six years.

2 int. State what knowledge you have had of wet grain that has been sunken in water and of the injury that water does to grain when sunk under water, and of its value after having been sunk in water.

Ans. I have had some experience with wet grain; have seen it and handled more or less of it. My experience has not been very extensive.

163 3d int. What, in your judgment, would be the difference in value of grain sunk in the Mississippi River at a point as far north as St. Paul, in April, whether the same should remain under water half a or day three days?

Ans. So long as it remained under water and not exposed to the air it would make very little or no difference, at that time of the year, whether it remained under water for half a day or for three days as to value.

4 int. What would be the value of wheat in a deck-barge sunk under water in bulk?

Ans. That depends on locality. If away from a market, it would not be worth anything. But if it was near a large city like Cincinnati, Chicago, or St. Louis, where it can be used for various purposes, and where they have conveniences for curing and handling such grain already prepared, it would probably bring half price. Before it can be used for distillers' purposes the grain must be first dried and ground. In cold weather I don't think it would make any difference whether it had been sunk half a day or three days, as to their being able to dry and grind it, at least very little. A barge-load of grain in bulk under water is a very difficult and expensive thing to get out and handle.

SELWYN P. HILL.

Deposition of John W. Christy.

JOHN W. CHRISTY, of sound mind and lawful age, being by me first duly and carefully examined, cautioned, and solemnly sworn to testify the truth, the whole truth, and nothing but the truth, deposes and says as follows, to wit:

Examination-in-chief:

1 int. State your name, age, residence, and occupation, and how long, and where you have followed your occupation.

Ans. My name is John W. Christy. My age is thirty-one. Residence, Delhi, Hamilton County, O. I am a grain-dealer and commission merchant by occupation. I have followed my occupation as such here in Cincinnati and at Louisville for ten years.

2 int. State what experience, if any, you have had in handling sunken grain, and what knowledge, if any, you have of the effect of water

upon wheat and other grain when sunk in water, and of the value
164 of such sunken wheat and other grain?

Ans. I have handled wet grain, more or less, ever since I have been in the business, and think I have handled enough to know what effect water has on sunken grain, and to know something of the value of it. We have handled a great deal of it at one time and another.

3 int. What would be the difference in damage to a lot of grain lying sunk in the river as far north as St. Paul, in April, whether for half a day or for three days?

Ans. Certainly no difference, as it would become thoroughly wet in half a day, and it couldn't heat until it was exposed to the air. I am sure it wouldn't in three days, and don't believe it would heat or spoil under water, at that place, & at that time of the year, if it remained there a week. It would be just as valuable at the end of three days as at the end of the first half day.

4 int. What is the value of wheat and other kinds of grain that has been once sunk under water, at a place where there is little demand for it, & where there are no conveniences for handling and curing it, such as kiln-drying establishments previously prepared?

Ans. The value at such places would scarcely by anything, I think. If at a large city, where they have conveniences for handling and curing it, and where they can use it for various purposes—it would be different under such circumstances—it would possibly sell for half price, though I think half price is a big estimate on it. Before the distillers could use it for their purposes it would have to be ground, and I don't think it could be ground until it had been dried. Wheat sunk in a deck-barge, in bulk, would be an awful ugly thing to handle, and handling it would be much more expensive than it would if in sacks.

JOHN W. CHRISTY.

UNITED STATES OF AMERICA,
State of Ohio, County of Hamilton:

I, R. S. Fulton, a United States commissioner within and for the southern district of Ohio, residing in Cincinnati, in above county
165 and State, appointed, qualified, and commissioned as stated in the caption hereof, do hereby certify that the reason for taking the foregoing depositions is, and the fact is, that each and all of the said above witnesses reside more than one hundred miles from Milwaukee, Wisconsin, the place of trial of the cause for and in which the said depositions were taken, and that the same are necessary. I further certify that, at the request of T. D. Lincoln, esq., proctor for claimants, I informed Messrs. Hoadley, Jackson & Johnson of the time and place of taking the said depositions, and was by them informed that they had no authority to cross-examine witnesses in this said cause, and that no other notification was made out and served on the adverse party, or their attorney or agent, by me of the time and place of taking said depositions, and to be present to put interrogatories if he or they should think fit, because neither the said party, his attorney or agent, were, at the time of the taking of said depositions, within one hundred miles of Cincinnati, the place where the said depositions were taken, to my knowledge. I further certify that on the 27th and 28th days of May, A. D. 1869, at the law office of Messrs. Lincoln, Smith & Warnock, in Cincinnati, in the county of Hamilton and State of Ohio, and within the said southern district of Ohio, I was attended by R. S. Harris, Jno. M. Secrist, Jno. Beattie, S. P. Hill, and Jno. W. Christy, they being of sound mind and lawful age; and the said witnesses were each and all, previous

to the commencement of their respective depositions, carefully examined and cautioned, and solemnly sworn to testify the truth, the whole truth, and nothing but the truth, and the depositions hereinbefore appearing, were by me reduced to writing in the presence of the said witnesses respectively, and were by me read over to the said witnesses respectively, and were thereafter subscribed by the said witnesses respectively in my presence. I further certify that I am not of counsel, attorney, or relative of either of the parties to this suit, or in any manner interested in the event of the said cause. All of which is here certified as to the reason for taking said depositions, and the manner in which they were taken.

166 In testimony whereof I have hereunto set my hand, at Cincinnati, this 29th day of May, 1869.

R. S. FULTON,
United States Commissioner for Southern District of Ohio.

And now at this same term, (April term, 1869,) and on the twenty-fourth day thereof, to wit, on the sixth day of July, A. D. 1869, the following proceedings were had, to wit:

Decree.

THE GERMANIA INSURANCE COMPANY, The Niagara Insurance Company, The Hanover Insurance Company, The Republic Insurance Company *vs.* THE STEAMBOAT LADY PIKE, HER boats, tackle, apparel, &c., and the barge Salmon.	In admiralty.

This day came the parties, by their counsel, and, on consideration of the pleadings and proofs and arguments of said counsel, it is ordered, adjudged, and decreed by the court that this libel be and is hereby dismissed, with costs to be taxed. And it is further ordered, adjudged, and decreed that, in default of the payment of said costs within ten days, that an execution issue against The Germania Insurance Company, The Niagara Insurance Company, The Hanover Insurance Company, The Republic Insurance Company, and Levi H. Kellogg, their stipulator, for the same.

A. G. MILLER.

Decree signed and recorded July 6th, 1869.

J. M. MILLER, *Clerk.*

Appeal.

And came said libellants, in open court, and prayed an appeal to the circuit court of the United States for the district of Wisconsin.

Whereupon it is ordered by the court that said appeal be allowed upon the libellants entering into a stipulation in the sum of one thousand dollars, with sureties to be approved by the judge, for the costs of such appeal.

167 JULY 13TH, 1869.—This day came The Germania Insurance Company, The Hanover Insurance Company, The Niagara Insurance Company, & The Republic Insurance Company, by E. Mariner, their

proctor, and presented to the court their bond on appeal in the sum of one thousand dollars, with Levi H. Kellogg and Edwin H. Goodrich as sureties, conditioned "that the above-named appellants shall prosecute their appeal with effect, and pay all such costs and expenses as shall be awarded against them as such appellants;" which bond is as follows:

Appeal bond.

Know all men by these presents that we, The Germania Insurance Company, The Hanover Insurance Company, The Niagara Insurance Company, The Republic Insurance Company, & Levi H. Kellogg, principals, & Edwin H. Goodrich, surety, are held and firmly bound unto Charles G. Pearce, William W. Hanley, & William Knight in the sum of one thousand dollars, to be paid to the said Pearce, Hanley & Knight, their executors, administrators, or assigns, to which payment, well and truly to be made and done, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals the twelfth day of July, A. D. 1869.

Whereas the said obligors, by the decision of the district court of the United States for the district of Wisconsin, on the 6th day of July, 1869, as claimants of the steamer Lady Pike, recovered a decree against the said principals in said bond in a certain cause of damages, civil & maritime, therein depending, wherein the said Germania Insurance Company, The Republic Insurance Company, The Niagara Insurance Company, & Hanover Insurance Company were libel'ants, & the said steamboat Lady Pike, said obligors' claimants, were respondents, dismissing said libel, with costs taxed at $260.50. And whereas the said libellants, deeming themselves agrieved by such decree, have appealed therefrom to the circuit court of the United States for the district of Wisconsin:

Now, therefore, the condition of this obligation is such that if the above-named appellants shall prosecute their appeal with effect,
168 and pay all such costs and expenses as shall be awarded against them as such appellants, then this obligation shall be null & void; otherwise of force.

THE GERMANIA INSURANCE COMPANY,
By E. MARINER, *its Att'y.* [L. S.]
THE HANOVER INSURANCE,
By E. MARINER, *its Att'y.* [L. S.]
THE NIAGARA INSURANCE COMPANY,
By E. MARINER, *its Att'y.* [L. S.]
THE REPUBLIC INSURANCE COMPANY,
By E. MARINER, *its Att'y.* [L. S.]
LEVI H. KELLOGG. [L. S.]
EDWIN H. GOODRICH. [L. S.]

JULY 13, 1869. Approved.

A. G. MILLER, *Judge.*

Clerk's certificate.

UNITED STATES OF AMERICA,
District of Wisconsin, ss:

I, John M. Miller, clerk of the district court of the United States of America for the district of Wisconsin, do hereby certify that I have

compared the writings annexed to the certificate, and they are true copies of their respective originals, and are correct transcripts therefrom, and of the whole thereof, now on file and remaining of record in my office.

In testimony whereof I have hereunto set my hand and duly affixed the seal of the said court at the city of Milwaukee, in the said district of Wisconsin, this twenty-sixth day of August, in the year of our Lord one thousand eight hundred and sixty-nine, and of the Independence of the United States the ninety-fourth.

[SEAL.] J. M. MILLER, *Clerk.*

(End of the record from the district court.)

PROCEEDINGS IN CIRCUIT COURT.

SEPTEMBER 16, 1869.—This day came the parties, by their counsel, and, by consent, it is ordered by the court that this cause be, and hereby is, continued.

OCTOBER 1, 1860.—Depositions received from post-office and filed.

169 OCTOBER 5, 1870.—This day came the claimants, by their proctors, and moved the court to suppress the depositions of V. A. Bigelow and James B. Johnston, for reasons filed as follows:

Motion to suppress test'y.

Circuit court of the United States for the eastern district of Wisconsin.

THE GERMANIA INSURANCE COMPANY ET AL.
vs.
THE STEAMBOAT LADY PIKE.

Now come Finches, Lynde & Miller, proctors for claimants in the above-entitled cause, and move the court to suppress the depositions of V. A. Bigelow and James B. Johnston, taken by the appellant, for the reason there was no affidavit of the materiality of the witnesses, there was no notice of the taking of the depositions, and for the reason that the certificate of the officer taking the depositions is insufficient and not in compliance with the act of Congress.

FINCHES, LYNDE & MILLER,
Proctors for Claimants.

Hearing.

NOVEMBER 2, 1870.—This day came the parties, by their counsel, Mr. Mariner appearing for the libellants and Mr. Lynde for the respondents, and this cause came on to be heard before the honorable Thomas Dummond, circuit judge, and was argued by said counsel, and the hearing not being concluded, the same was adjourned until to-morrow morning.

NOVEMBER 3, 1870.—This day came the parties, by their counsel, and the hearing of this cause was resumed before the honorable Thomas

Dummond, circuit judge, and being concluded the same was held under advisement.

On said hearing, the following testimony, taken in the circuit court, was read in addition to that taken in the district court.

Appellant's testimony.

Circuit court of the United States in and for the district of Wisconsin.

THE GERMANY INSURANCE COMPANY ET AL., appellants,
vs.
170 THE STEAMBOAT LADY PIKE. HENRY Lowry, claimant, respondent.

DISTRICT OF WISCONSIN, *ss:*

Before Benj. F. Bryant, county judge in and for La Crosse County, Wisconsin.

The deposition of V. M. Bigelow and James B. Johnston, on behalf of the appellant. At the probate office, La Crosse, Sept. 27, 1870.

Present, E. Mariner, of counsel for appellant; , of counsel for .

Deposition of V. A. Bigelow.

And the said V. A. BIGELOW, being duly sworn as aforesaid, testified as follows:

Question 1. What is your name, age, occupation, and place of residence?

Ans. My name is V. A. Bigelow; I was 27 years old the 9th day of September, 1870; am a steamboat pilot, and reside in La Crosse, Wis.

Quest. 2. How long have you been a pilot and where?

Ans. I have been a pilot six (6) years—four years from La Crosse, Wis., to St. Paul, Minn., and two years from Port Byron to St. Paul, Minn.; and during the six years I have also been pilot from St. Paul, Minn., to Carver, on the Minnesota River.

Quest. 3. Are your familiar with the channel of the Mississippi River from St. Paul, Minn., to Mendota?

Ans. I am, and have been for six years last past.

Quest. 4. Have you been, during all of that time, in the habit of piloting boats with and without tows on that part of the river; and, if so, how frequently?

Ans. The first three years. We run there quite regularly. We made the round trip every four or five days. For the past three years I have been running there not to exceed half a dozen times during the season.

Quest. 5. How large a tow did you ever take through the pier of the bridge just above St. Paul?

Ans. A boat with two barges was the largest I ever took through.

Quest. 6. How wide a tow would that make?

171 Ans. The boat about forty (40) feet, the two barges about fifty (50) feet, making about ninety (90) feet.

Quest. 7. Between which piers did you go?

Ans. Sometimes we would go through one side and sometimes the other side of the left-hand pier from the turn-table coming down.

Quest. 8. How much space would you want clear on each side of your tow, in coming down stream, between those piers, to go safely?

Ans. I should want ten feet, at least, on each side of the tow.

Quest. 9. Would you deem it prudent to come down stream with less than that amount of space, running at the ordinary speed of the boat?

Ans. I should not deem it prudent to go through with even more than that with a full head of steam—that is at ordinary speed. I would not be willing to take any barges through there at ordinary speed.

Quest. 10. Why not?

Ans. I don't think it would be exercising good judgment; it would be taking too many chances. A boat running at full head of steam might take a sheer, while, if she went down slower, we could steer her better—have a better control of the boat. And thus, if she hit going slower, much less damage would be done. If the boat floats through with the current, she can be backed out if she is not in the right position to go through.

Quest. 11. At what speed do you ordinarily approach those piers, in going through them with a wide tow, going down stream?

Ans. I should not have much more speed, if any, than the current would give. I should approach them with my engine stopped.

Quest. 12. Does it make any difference in respect to the danger or difficulty of passing those piers whether you are coming down stream or going up?

Ans. It does make a great difference. It is most difficult going down stream.

Quest. 13. How much less space would you want going up stream than coming down?

172 Ans. In going up stream the boat may fill the piers full. The idea is this: you can enter the piers slowly, for you have the current against you, and if you stop the engine the current will stop the boat, and then the boat backs down where you can start again, and there is not half the danger there is in coming down stream.

Quest. 14. Is there as great danger of bilging or breaking the barge, if you should happen to hit the pier, in going up stream as in coming coming down?

Ans. No; one reason is the current is against you, and you can stop the boat quick, and little damage is done.

Quest. 15. Is what you have said true of both side-wheel and stern-wheel boats? I mean all your foregoing testimony.

Ans. Yes. You would use the same precaution whether on a stern-wheel or side-wbeel boat, but you would require more time and care with a stern-wheel boat, and I would want more room with a stern-wheel boat.

V. A. BIGELOW.

Subscribed & sworn to before me this 27th day of September, A. D. 1870.

BENJ. F. BRYANT,
County Judge, La Crosse County, Wis.

Deposition of James B. Johnson.

And the said JAMES B. JOHNSON, being duly sworn as aforesaid, testifies as follows:

Quest. 1. What is your name, age, occupation, and place of residence?

Ans. My name is James B. Johnson; am 26 years old August, 1870;

am a pilot of steamboats on the Mississippi River, and reside in La Crosse, Wis.

Quest. 2. How long have you been a pilot, and where?

Ans. I have been a pilot five years; at first, for two years, from La Crosse, Wis., to S'te Paul, Minn., and on the Minnesota River, from F't Snelling to Shakopee; for the balance of the time, that is, for the last three years, from *the* Dubuque, Iowa, to S't Paul, Minn., and also on the Minnesota River as above.

Quest. 3. On what class of boats have you been a pilot as above?

Ans. I have been on all kinds and sizes—stern-wheel and side-wheel.

Quest. 4. Have you been, during that time, navigating the
173 Miss. River, from S't Paul to Mendota; and, if so, how often?

Ans. I have not been up there oftener than three or four times each season, but have been up there every season.

Quest. 5. Are the piers of the bridge, directly above S't Paul, placed so as to stand directly with the current?

Ans. I think they are, except that sometimes the current changes a little. I know that barges float through very nicely.

Quest. 6. How much clear space is it prudent to have over the width of a tow to go through between those piers with safety, coming down stream?

Ans. I should not want less than ten (10) feet on a side.

Quest. 7. At what rate of speed is it safe to approach those piers to pass through with a wide tow, coming down stream?

Ans. I would not think it safe coming down stream with a greater speed than three (3) miles an hour, including current—just steerage-way—and when I got between the piers then I would go through, if I was properly shaped, as fast as I could. I should come down toward the pier with a slow bell, and if I thought she was going to' fast I would stop the engine and let her float until I got in such shape that I thought it safe to go through.

Quest. 8. Why do you approach under a slow bell?

. So that, if I was not properly shaped to go through, I could back out and try it again.

Quest. 9. How wide a tow do you think it prudent to take through between those piers, coming down stream?

Ans. Not of greater width, clear of everything, than one hundred (100) feet.

Quest. 10. How wide a tow, in going up stream, would you think it prudent to take through the piers?

Ans. I don't think it would be dangerous in going up stream to take as wide a tow as would go through; for that matter it might rub on both sides.

Quest. 11. Is that bridge regarded by pilots as an obstruction to navigation; is it, in fact, an obstruction to navigation?

Ans. I think it is, in fact, an obstruction.

Quest. 12. To what extent does it obstruct navigation?

174 Ans. To the extent that, coming through, coming down stream, with a large-class boat and tow, we have to let go the tow, drop the tow through with lines, and then run the boat through by herself, and then pick up the tow after coming through.

Quest. 13. How wide are the largest class boats over all that go through that bridge?

Ans. The Milwaukee is as large as any which go through; she is from 55 to 60 feet beam.

Quest. 8. How much space would you want clear on each side of your tow, in coming down stream, between those piers, to go safely?

Ans. I should want ten feet, at least, on each side of the tow.

Quest. 9. Would you deem it prudent to come down stream with less than that amount of space, running at the ordinary speed of the boat?

Ans. I should not deem it prudent to go through with even more than that with a full head of steam—that is at ordinary speed. I would not be willing to take any barges through there at ordinary speed.

Quest. 10. Why not?

Ans. I don't think it would be exercising good judgment; it would be taking too many chances. A boat running at full head of steam might take a sheer, while, if she went down slower, we could steer her better—have a better control of the boat. And thus, if she hit going slower, much less damage would be done. If the boat floats through with the current, she can be backed out if she is not in the right position to go through.

Quest. 11. At what speed do you ordinarily approach those piers, in going through them with a wide tow, going down stream?

Ans. I should not have much more speed, if any, than the current would give. I should approach them with my engine stopped.

Quest. 12. Does it make any difference in respect to the danger or difficulty of passing those piers whether you are coming down stream or going up?

Ans. It does make a great difference. It is most difficult going down stream.

Quest. 13. How much less space would you want going up stream than coming down?

172 Ans. In going up stream the boat may fill the piers full. The idea is this: you can enter the piers slowly, for you have the current against you, and if you stop the engine the current will stop the boat, and then the boat backs down where you can start again, and there is not half the danger there is in coming down stream.

Quest. 14. Is there as great danger of bilging or breaking the barge, if you should happen to hit the pier, in going up stream as in coming coming down?

Ans. No; one reason is the current is against you, and you can stop the boat quick, and little damage is done.

Quest. 15. Is what you have said true of both side-wheel and stern-wheel boats? I mean all your foregoing testimony.

Ans. Yes. You would use the same precaution whether on a stern-wheel or side-wheel boat, but you would require more time and care with a stern-wheel boat, and I would want more room with a stern-wheel boat.

V. A. BIGELOW.

Subscribed & sworn to before me this 27th day of September, A. D. 1870.

BENJ. F. BRYANT,
County Judge, La Crosse County, Wis.

Deposition of James B. Johnson.

And the said JAMES B. JOHNSON, being duly sworn as aforesaid, testifies as follows:

Quest. 1. What is your name, age, occupation, and place of residence?

Ans. My name is James B. Johnson; am 26 years old August, 1870;

am a pilot of steamboats on the Mississippi River, and reside in La Crosse, Wis.

Quest. 2. How long have you been a pilot, and where?

Ans. I have been a pilot five years; at first, for two years, from La Crosse, Wis., to S'te Paul, Minn., and on the Minnesota River, from F't Snelling to Shakopee; for the balance of the time, that is, for the last three years, from the Dubuque, Iowa, to S't Paul, Minn., and also on the Minnesota River as above.

Quest. 3. On what class of boats have you been a pilot as above?

Ans. I have been on all kinds and sizes—stern-wheel and side-wheel.

Quest. 4. Have you been, during that time, navigating the
173 Miss. River, from S't Paul to Mendota; and, if so, how often?

Ans. I have not been up there oftener than three or four times each season, but have been up there every season.

Quest. 5. Are the piers of the bridge, directly above S't Paul, placed so as to stand directly with the current?

Ans. I think they are, except that sometimes the current changes a little. I know that barges float through very nicely.

Quest. 6. How much clear space is it prudent to have over the width of a tow to go through between those piers with safety, coming down stream?

Ans. I should not want less than ten (10) feet on a side.

Quest. 7. At what rate of speed is it safe to approach those piers to pass through with a wide tow, coming down stream?

Ans. I would not think it safe coming down stream with a greater speed than three (3) miles an hour, including current—just steerage-way—and when I got between the piers then I would go through, if I was properly shaped, as fast as I could. I should come down toward the pier with a slow bell, and if I thought she was going to' fast I would stop the engine and let her float until I got in such shape that I thought it safe to go through.

Quest. 8. Why do you approach under a slow bell?

. So that, if I was not properly shaped to go through, I could back out and try it again.

Quest. 9. How wide a tow do you think it prudent to take through between those piers, coming down stream?

Ans. Not of greater width, clear of everything, than one hundred (100) feet.

Quest. 10. How wide a tow, in going up stream, would you think it prudent to take through the piers?

Ans. I don't think it would be dangerous in going up stream to take as wide a tow as would go through; for that matter it might rub on both sides.

Quest. 11. Is that bridge regarded by pilots as an obstruction to navigation; is it, in fact, an obstruction to navigation?

Ans. I think it is, in fact, an obstruction.

Quest. 12. To what extent does it obstruct navigation?

174 Ans. To the extent that, coming through, coming down stream, with a large-class boat and tow, we have to let go the tow, drop the tow through with lines, and then run the boat through by herself, and then pick up the tow after coming through.

Quest. 13. How wide are the largest class boats over all that go through that bridge?

Ans. The Milwaukee is as large as any which go through; she is from 55 to 60 feet beam.

Quest. 14. Is it safe for her to tow a barge through there down stream?

Ans. I don't think it would be safe for her, on account of her being so large and long, and high above the water; so that you can't see the water so well, nor the space between the barge and the pier.

Ques. 14. How do you ordinarily get a barge through when you are towing one with the Milwaukee?

Ans. This season, since the bridge has been finished, we have drop'ed them through. Before the bridge was on, and if the water was high enough, we ran over the turn-table pier, and towed our barges there.

Ques. 15. How would it be with a tow-boat, a smaller boat adapted to towing?

Ans. I think it would be proper to take a tow through with a tow-boat—a boat adapted to towing—a hundred feet wide. I would not be afraid to do that.

Ques. 16. How wide a tow would you think it prudent to take with a boat adapted to towing through between the turn-table pier and the one next on the left, at ordinary speed, without checking your boat?

Ans. That would be owing to the day, the position I was in, and whether the wind was blowing. If the wind were blowing you would be compelled to have some headway on your boat to keep her from going from one side of the channel to the other. On a windy day I would want fifteen feet space on each side of the tow, between the tow and the pier, in running through, and I think there would then be some risk. I would not like to do it if the wind were blowing hard.

175 Quest. 17. Suppose it was still, and you had fifteen feet on each side clear space, would you think it prudent to go through at ordinary speed with a tow down steam?

Ans. I would with a good steering boat, that is, a boat that was steering her tow well, if I was well acquainted with the bridge and there was nothing in the way.

Quest. 8. Do you know Mr. Bigelow, the witness who testified last, and in whose employ is he and has he been for the last 5 or 6 years?

Ans. I have known Mr. Bigelow for the past 5 years, and during that time he has been in the employ of the Northwestern Union Packet Company.

Quest. 19. In whose employ have you been since you have been a pilot?

Ans. The Northwestern Union Packet during the boating season.

JAMES B. JOHNSTON.

Subscribed and sworn to before me this 27th day of September, A. D. 1870.

BENJ. F. BRYANT,
County Judge, La Crosse County, Wisconsin.

UNITED STATES OF AMERICA,
District of Wisconsin, ss:

I, Benjamin F. Bryant, judge of the county court of the county of La Crosse, in the State of Wisconsin, by virtue of the acts of Congress entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed February 20th, 1812, and the act of Congress entitled "An act in addition to an act entitled 'An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States,'" passed September 24th, 1789, do hereby certify that the reason for

taking the foregoing depositions is, and the fact is, that the witnesses above named are material and necessary in the cause in the caption of said deposition named, and that they & each of them live at a greater distance than one hundred miles from the place of trial.

I further certify that no notice to any person of the time and place of taking said deposition and notifying them to be present at the taking of the same, and to put interrogatories if they might think fit,
176 signed by me, was made out and served on said claimants, for the reason that neither the claimant nor any of them, nor any of their proctors, attorneys, or counsel, are within one hundred miles of the place of such caption.

I further certify that I was attended by the counsel for the libellants at the time and place as stated in the caption of said deposition, and by the said witnesses, and that the said witnesses, being of sound mind and lawful age, were, before the commencement of the taking of his deposition, by me carefully examined & cautioned, & duly and publicly sworn to testify the truth, the whole truth, and nothing but the truth, in the cause aforesaid, and that their depositions as given were reduced to writing by me in presence of said witnesses, and from their statements, and that the said depositions when completed were carefully read over to said witnesses and subscribed by them in my presence and in the presence of such counsel in the said cause as were in attendance.

And I further certify that in the caption and body of the said deposition is contained a complete record of all the proceedings before me, at the time of the taking of the same, and that I have retained the said deposition in my possession for the purpose mailing the same with my own hand. That I have sealed the same up, and directed them to Edward Kurtz, esq., clerk of said court, at the city of Milwaukee, and deposited them in the post-office at said La Crosse directed to the said clerk of the court for which the same was taken.

And I do further certify that I am not of counsel or attorney for either of the parties in the caption of said deposition named, nor in any wise interested in the event of said cause.

In testimony whereof I have hereunto set my hand this 29th day of September, A. D. 1870, and of the Independence of America, the—

[SEAL OF C. COURT.] BENJ. F. BRYANT,
County Judge, La Crosse County, Wisconsin.

Circuit court of the United States in & for the eastern district of Wisconsin. In admiralty.

177 THE GERMANIA INSURANCE COMPANY, The Hanover Insurance Company, The Republic Insurance Company, libellants & appellants,
vs.
THE STEAMBOAT LADY PIKE, &C., CHRISTOPHER G. Pearce et al., claimants.

EASTERN DISTRICT OF WISCONSIN, *ss:*

Before Francis Bloodgood, United States commissioner in & for said district.

The deposition of Uriah Brock, on behalf of the libellants & appellants, at the commissioner's office, Milwaukee, October 21, 1870. Present,

E. Mariner, esq., of counsel for the libellants & appellants; W. Pitt Lynde, esq., of counsel for the claimants.

Deposition of Uriah Brock.

URIAH BROCK, being duly sworn, deposes and says as follows, to wit:

Q. What is your name, age, & occupation?

A. My name is Uriah Brock. I am 50 years old. I am pilot on the Mississippi River from St. Louis to St. Paul.

Q. How long have you been such pilot?

A. About 28 years.

Q. Are you familiar with the location and situation of the bridge above St. Paul, the railroad bridge across the river, & how long have you been?

A. Well, I am not very familiar with it.

Q. Have you been through there more or less?

A. I have been through it about 4 times in all.

Q. Before or since the wood-work was put upon the piers?

A. Once only since the bridge was finished.

Q. With what vessel?

A. The Phil Sheridan.

Q. Are you familiar with navigating the other parts of the Mississippi River where there are bridges?

A. Yes.

Q. Is the bridge just above St. Paul an obstruction to navigation in your opinion?

(Objected to.)

178 A. I don't know that I know what obstruction means. My understanding of obstruction is where it can't be overcome at all: that a steamboat must give up; you can't get through it.

Q. Is it a hindrance to navigation?

A. It is.

Q. To what extent is it a hindrance, and how does it hinder you?

(Objected to.)

A. It delays boats in descending the river with barges and tows.

Q. How does it delay them?

A. They can't run right straight along as though there was no bridge there; they have to use rather slower means of getting through?

Q. How; what means?

A. By letting go their barges, and getting through and dropping themselves through.

Q. Is it greater or less hindrance since the superstructure, the wood-work, was put upon the pier?

A. I should consider it a greater since.

Q. How wide a tow, that is, how many barges, can you take through there coming down stream with a boat safely?

A. That is owing to the size of the boat.

Q. Take the ordinary-sized boat and the ordinary-sized barges?

A. I don't know the width of the bridge between the piers.

Q. With the Phil Sheridan, how many barges can you take through?

A. One.

Q. What is the width of the Sheridan over all, as near as you know?

A. 70 feet.

Q. In coming down stream how much space do you need on each side of the tow to come through safely in ordinary weather?

A. Well, that bridge would not require very much space on either side. It has a mild current, tolerably straight.

Q. Well, how much coming at full speed?

A. It would be owing to the boat I had a hold of. With the
179 Phil Sheridan, the only one that I have ever tried through there, 3 feet on each side would do me.

Q. Do you come through there at full speed coming down stream?

A. Me—myself?

Q. Yes, with the boat?

A. No, sir.

Q. How do you come through?

A. Work her slow, under what we call a "slow-bell."

Q. Would you think it prudent to undertake to run through with the Phil Sheridan and her tow at full speed with only 3 feet of space on each side?

A. Well, that is owing to circumstances. If she was in the right shape & handling rightly I should go through slow and float. If she was not in right shape I might go ahead on her strong to get her into the right shape.

Q. I mean would you come down the river and approach the bridge at full speed? If you had a tow that would take up all of the bridge except 6 feet, would you deem it prudent?

A. Well, you can't always tell. There is no regular thing about it. The boat may be swinging a little one way or the other, and you can't always govern her to a fraction. In that case you may have to go ahead on her when you would not like to; but you would have to be governed by circumstances.

Q. Would you slacken your speed any in coming down from the upper bridge, leaving Mendota & coming down to go through the bridge just above St. Paul, with a tow? Would you deem it prudent to run clear up to the bridge at full speed?

A. Well, if it is perfectly calm, and I can control my boat under a "slow-bell," I would work slow, but if the wind is blowing from either shore or down stream, it would be necessary to go full-head of steam to keep her straight in the river. In that case I would have to keep going under full head of steam.

Q. How fast would you go; how many miles an hour?

A. From 6 to 7 miles in that river with the barge.

Q. Is that the ordinary speed of your boat?

A. No, sir.

180 Q. What is the ordinary speed of your boat?

A. About 9 miles below St. Paul.

Q. With or without barges?

A. With the barge; that is, the Phil Sheridan. The current is slacker up there, and we don't go so fast.

Q. Do you think it would be prudent to approach the bridge at full speed, when you are going down stream, with but 3 feet to spare at each side?

A. I don't think it would be so safe as to go slow.

Mr. LYNDE. Do you mean when there is a wind that it would be safer to go slow?

A. No, I don't. I mean that at no time it is so safe to go under a full head of steam as to go slow. But the winds sometimes make it necessary for us to go under full head of steam.

Q. Did you ever run down there at the bridge—through that bridge—with a tow, with a full head of steam, without checking your engine?

A. Through the draw?

Q. Yes; run down to the draw, and through?
A. No, sir; I never did.
Q. With a smaller boat & heavy tow, would you approach any different than you would with the Phil Sheridan and barge?
A. I think I would.
Q. How differently?
A. That I can't tell, because I never tried it.
Q. Is it a common occurrence that you run bridges below St. Paul?
A. Yes, sir.
Q. Whereabouts?
A. Dubuque, Burlington, and Quincy.
Q. What other bridges do you pass through, and how?
A. Rock Island bridge and Clinton.
Q. How do you go through them?
A. Drop her.
Q. What do you mean by that?
A. Let her float.
Q. Which way?
181 A. Either way. Sometimes head-on; sometimes stern-on.
Q. What do you mean by drop through?
A. Checking her up & letting her float; either stern first or bow first.
Q. Why do you drop through those bridges?
A. The draws are placed across the channel, making a cross-current, so that in going through with full head of steam we are driven against the draw-pier—the long pier—the long pier being filled up with stones, harder than the boat; consequently we are likely to be smashed up.
Q. How is the current at these two last-mentioned bridges, as compared with the others?
A. The current goes straight through the other bridges.
Q. And as to speed, how is it?
A. Rock Island bridge, the current is stronger than in any of the others.
Q. How do you approach the other bridges to pass through?
A. Dubuque, Burlington, & Quincy?
Q. Yes.
A. Head right up for the draw, and keep a going through the space in the draw.
Q. How wide are the draws?
A. I think they are 150 feet. I never have measured them though.
Q. How much wider are they than the bridge above St. Paul?
A. 50 feet or thereabouts.
Q. How wide a tow is it safe for you, with your boat, to take through them?
A. Two barges along-side; that is, one on each side.
Q. About how wide a tow does that make?
A. About 120 feet.
Q. How wide is the average of barges? How wide does the average run?
A. From 24 to 26 feet.
Q. The Sheridan is a very large, powerful boat, is she not?
A. Yes, sir.
Q. How many barges would she handle readily, loaded?
A. We have towed 4 with her.
LYNDE. Does she carry freight?
A. Yes, sir.

182 Q. How many bushels of grain will the ordinary-sized barges carry?

A. From 7,000 to 10,000 bushels.

Q. How long are they—the barges?

A. About 130 feet.

Q. How large a tow would the Phil Sheridan handle readily—how many bushels?

A. Well, I don't know. I can't say.

Q. Are you always able to tow a barge through the piers—upper piers—above St. Paul, or are you sometimes obliged to drop them through?

A. I kept her along-side the only time I ever came through with her—through the draw—& dropped through.

Q. But with 2 barges you would have to drop one through separately?

A. Yes, sir.

Q. The other bridges below there are all wide enough to go through with barges?

A. Yes, sir.

Q. Until you get down to Rock Island?

A. We drop through there with two.

Q. Does it make any difference whether you are going up or down stream with the width of a tow that you can take through the bridge safely?

A. There is a little more chance to avoid a collision with the bridge in going up stream than there is in coming down stream.

Q. Is there as much risk in colliding, in running against the bridge, in damaging your vessel or your barge, in going up stream? Do you hit as hard against the piers going up stream as coming down?

A. I think you would hit harder in coming down stream than you would in going up, if you were running full head of steam.

Q. Have you ever piloted one of the tow-boats with a tow on the upper river, used exclusively for towing?

A. I may have made a trip occasionally, but I have never been regularly in them.

Q. Where has your trip ordinarily ceased; at St. Paul?

A. St. Paul.

183 Q. You say you think it would be safe to approach & run through that pier at full speed in fair weather, with 3 feet spare room on each side of you, between your tow and the pier; that is, with the tow 6 feet narrower than the opening between the piers?

A. Do you want to know if I think it would be safe to run full head of steam?

Q. Do you think it would be safe or prudent to run down & run through the piers with a ful head of steam, without checking your boat, with a tow only 6 feet narrower than the opening between the piers?

A. Well, I would rather go slow if it could be done; if you could hold the boat in.

Q. If you had 15 feet spare room, that is, 15 feet excess—I mean in the piers over your tow—how would it be?

A. It would be a little safer.

Q. Would you think it prudent to go slow or at full speed then?

A. Well, if it is calm & the boat is not rendered ungovernable by winds, I would always go slow. It is simposible for us to control our boats just the same way every time; something varies her, and we have to use different methods of controlling her—stop one wheel, go ahead on

the other; sometimes back one; sometimes work them both strong; sometimes in calm time we can work slow and float through.

Cross-examination:

Q. Captain, if in passing a bridge you were headed to the draw, and just before you entered the draw you should be struck with a gust of wind, with a heavy tow on, would it be better that you should be going slow, or that you should have a full head of steam on?

A. In order to avoid flanking a collision with the piers I should whale it at her.

Q. That is, with all head on?

A. Yes sir.

URIAH BROCK.

184 Read over to the witness & subscribed by him before me this 26th October, 1870.

FRANCIS BLOODGOOD,
U S. Commissioner.

185 [Francis Bloodgood, commmissioner of U. S. and State courts and of U. S. court of claims, and commissioner to take acknowledgement of deeds, depositions &c., for all the States. Office No. 8, Excelsior Block, Milwaukee.]

Notice.

Circuit court of the United States for the eastern district of Wisconsin.

THE GERMANIA INSURANCE COMPANY ET AL., appellants,
vs.
THE STEAMBOAT LADY PIKE, &C., & CHRISTOPHER J. PEARCE ET AL., claimants.

Please to take notice that W'm Fisher, Frank Norris, Uriah Brock, and James Raplie, witness', whose testimony is necessary in this cause, will be examined on the part of the libellants & appellants in this cause, before me, a commissioner duly appointed by the circuit court of the United States for the district of Wisconsin, at my office, No. 8, Excelsior Block, southeast corner of East Water and Wisconsin streets, in the city of Milwaukee, district of Wisconsin, on the 21 day of October, A. D. 1870, at 4 o'clock in the afternoon, at which time and place you are hereby notified to be present, and put interrogatories, if you shall think fit.

Dated Milwaukee, the 20 day of Oct., A. D. 1870.

Yours, etc.,

FR. BLOODGOOD,
U. S. Commissioner, District of Wisconsin.

To FINCHES, LYNDE, & MILLER,
Solicitors for claimants, &c.

(Endorsed:)

EASTERN DISTRICT OF WISCONSIN, *ss:*

Charles T. Jones, being sworn, says that at the request of the appellants he served the within notice on the attorneys for the claimants on the 20th day of October, 1870, at 3 o'clock and forty-five minutes p. m.,

by delivering the duplicate thereof to William P. Lynde, esq'r, personally, one of the solicitors for the claimants, at his office in the city of Milwaukee.

C. F. JONES.

Sworn and subscribed before me this 21st October, 1870.

FR. BLOODGOOD,
U. S. Com'r, E. D. Wis.

186 U. S. circuit court, eastern district of Wisconsin.

THE GERMANIA INSURANCE COMPANY ET AL., appellant,
vs.
THE STEAMBOAT LADY PIKE, &C., CHRISTOPHER G. Pearce et al., claimants.

EASTERN DISTRICT OF WISCONSIN, *ss:*

Ephraim Mariner, being duly sworn, says that the William Fisher, Frank Norris, Uriah Brock, James Raplie are material necessary witnesses for the libellants & appellants, as he verily believes, & that he is proctor for the appellants.

E. MARINER.

Subscribed & sworn before me this 20th Oct., 1870.

DAVID S. ORDWAY,
U. S. Court Com'r.

187 UNITED STATES OF AMERICA,
District of Wisconsin, ss:

I, Francis Bloodgood, a commissioner duly appointed by the circuit court of the United States for the district of Wisconsin, under and by virtue of the acts of Congress entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed February 20, 1812, and the act of Congress entitled "An act in addition to an act entitled 'An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States,'" passed March 1st, 1817, and the act entitled "An act to establish the judicial courts of the United States," passed September 24th, 1789, do hereby certify that the reason for taking the foregoing deposition is a reference to me under rule 52, in admiralty, pursuant to the affidavit & notice, with the proof of service thereof endorsed thereon, hereto annexed.

I further certify that I was attended by the parties, or their counsel, at the time and place as stated in the caption of said deposition, and by the said witness; and that the said witness, being of sound mind and lawful age, was, before the commencement of the taking of his deposition, by me duly and publicly sworn to testify the truth, the whole truth, and nothing but the truth, in the cause aforesaid, and that the deposition as given was reduced to writing, with consent of counsel, by Joseph Colt, my clerk, a disinterested person, in my presence & under my direction, in presence of said witness, and from his statements, and that the said deposition when completed was carefully read over to said witness and subscribed by him, in my presence, and in the presence of such of the parties and counsel in the said cause as were in attendance.

And I further certify that in the caption and body of the said deposition is contained a complete record of all the proceedings before me at the time of the taking of the same, and that I have retained the said deposition in my possession for the purpose of delivering the same with my own hand into the circuit court of the United States for the eastern district of Wisconsin, the court for which the same was taken.

And I do further certify that I am not of counsel or attorney for either of the parties in the caption of said deposition named, nor in any wise interested in the event of said cause.

In testimony whereof I have hereunto set my hand this 26th day of October, A. D. 1870, and of the Independence of America the

FRANCIS BLOODGOOD,
U. S. Commissioner, Eastern District of Wisconsin.

188 And now, at this same term, to wit, April term of said circuit court, and on the seventeenth day thereof, to wit, on the 22d day of April, A. D. 1871, the following proceedings were had, to wit:

189 *Decree.*

THE GERMANIA INSURANCE COMPANY, THE Niag'ra Insurance Company, The Hanover Insurance Company, The Republic Insurance Company

vs.

THE STEAMBOAT LADY PIKE, HER BOATS, &C., and the barge Salmon, Christopher G. Pearce, William W. Hanley, & William Knight, claimants of said steamboat, & the Western Union Railroad Company, claimant of said barge.

} Appeal in admiralty.

This day came the parties, by their counsel, and, on consideration of this cause and the arguments of counsel, it is ordered by the honorable Thomas Drummond, circuit judge, that the decree of the district court dismissing the libel herein be, and hereby is, affirmed, and that the libellants pay the costs in this cause to be taxed, together with the costs of the district court, taxed at four hundred and fifty-five dollars and sixty cents, within ten days, or, in default thereof, that an execution be issued against them and their stipulator, for the same.

Appeal.

And came the libellants, by their advocate, and prayed an appeal to the Supreme Court of the United States; whereupon it is ordered by the court that said appeal be, and hereby is, allowed, and that the libellants give bond, with surety to be approved, in the penalty of five hundred dollars, conditioned to pay the costs of said appeal.

NOVEMBER 2, 1872.—This day came the libellants, by their proctor, and filed their bond, with Levi H. Kellogg and E. Mariner as sureties, in the penalty of five hundred dollars, conditioned to prosecute their appeal to effect, and answer all damages and costs if they fail to make their plea good, which bond is approved by the district judge, and is as follows, to wit:

190 Know all men by these presents: That we, The Germania Insurance Company, The Hanover Insurance Company, The Re-

public Insurance Company, and Levi H. Kellogg & E. Mariner, sureties, are held and firmly bound unto Christopher G. Pearce, William W. Hanley, and William Knight, claimants of the steamboat Lady Pike, & The Western Union Railroad Company, claimant of barge, in the full and just sum of five hundred dollars, to be paid to the said Christopher G. Pearce, William W. Hanley, and William Knight, and The Western Union Railroad Company, their certain attorney, executors, administrators, or assigns, to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents. Sealed with our seals, and dated this seventh day of September, in the year of our Lord one thousand eight hundred and seventy-two.

Whereas, lately, at a circuit court of the United States for the eastern district of Wisconsin, in a suit depending in said court, between The Germania Insurance Company, The Hanover Insurance Company, The Republic Insurance Company, libellants, and Levi H. Kellogg, stipulator, appellants, and the said Christopher G. Pearce, William W. Hanley and William Knight, claimants of the steamboat Lady Pike, and The Western Union Railroad Company, claimant and respondents, a decree was rendered against the said appellants, affirming the decree of the district court of said district dismissing the libel with costs; and the said appellants having obtained an order for appeal, and filed a copy thereof in the clerk's office of the said court, to reverse the said decree in the aforesaid suit, and a citation directed to the said Christopher G. Pearce, William Hanley, William Knight, and The Western Union Railway Company, citing and admonishing to be and appear at a Supreme Court of the United States, to be holden at Washington the first Monday of December next:

Now the condition of the above obligation is such that if the said The Germania Insurance Company, The Hanover Insurance Company, and The Republic Insurance Company shall prosecute said appeal to effect, and answer all damages and costs if they fail to make their plea good, then the above obligation to be void; else to remain in full force and virtue.

THE GERMANIA INSURANCE COMPANY,
THE HANOVER INSURANCE COMPANY,
THE REPUBLIC INSURANCE COMPANY,
By E. MARINER, *their Att'y.* [L. S.]
LEVI H. KELLOGG,
By E. MARINER, *his Att'y.* [L. S.]
E. MARINER. [L. S.]

Sealed and delivered in presence of—

Nov. 2, 1872. This bond approved.

A. G. MILLER, *District Judge.*

191 UNITED STATES OF AMERICA,
Eastern District of Wisconsin, ss:

I, Edward Kurtz, clerk of the circuit court of the United States of America for the eastern district of Wisconsin, do hereby certify that I have compared the writings annexed to this certificate, and they are true copies of their respective originals, and are correct transcripts therefrom now on file and remaining of record in my office, being a full and complete copy of the record & proceedings in the case of The Germania Insurance Company et al. vs. The Steamboat Lady Pike, her boats, &c., and Barge Salmon.

In testimony whereof I have hereunto set my hand, and duly affixed the seal of the said court, at the city of Milwaukee, in said eastern district of Wisconsin, this twentieth day of November, in the year of our Lord one thousand eight hundred and seventy-two, and of the Independence of the said United States the ninety-seventh.

[SEAL.] EDWARD KURTZ, *Clerk.*

192 THE UNITED STATES OF AMERICA:

[SEAL.] To Christopher G. Pearce, William W. Hanley, William Knight, and the Western Union Railroad Company, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the first Monday of December next, pursuant to an appeal in the circuit court of the United States for the eastern district of Wisconsin, wherein The Germania Insurance Company, The Niagara Insurance Company, The Hanover Insurance Company, and The Republic Insurance Company are appellants, and you are appellees, to show cause, if any there be, why the decree passed against the said The Germania Insurance Company, The Niagara Insurance Company, The Hanover Insurance Company, and The Republic Insurance Company should not be reversed, and speedy justice should not be done to the parties in that behalf.

Witness the honorable Salmon P. Chase, Chief Justice of the said Supreme Court of the United States, this second day of November, in the year of our Lord one thousand eight hundred and seventy-two, and of our Independence the ninety-seventh.

A. G. MILLER,
District Judge.

Served on Finches, Lynde & Miller, attorneys of record of the abovenamed appellees, by delivering a copy of this citation to Henry M. Finch, one of said firm, personally, this 9th day of November, A. D. 1872.

C. S. HAMILTON,
Marshal.

(Indorsement on cover:) No. 349. The Germania Insurance Company, The Niagara Insurance Company, The Hanover Insurance Company, & The Republic Insurance Company, appellants, vs. The Steamboat Lady Pike, her boats, &c., & The Barge Salmon, Christopher G. Pearce, William W. Hanley, & William Knight, cl'mts *of the steamboat* of said steamboat, and The Western Union Railway Company, claimant of said barge. E. Wisconsin C. C. U. S. Filed 7th December, 1872.

In the Supreme Court of the United States.

OCTOBER TERM, 1874.

THE GERMANIA INSURANCE COMPANY ET AL., *Appellants*,
vs.
THE STEAMBOAT LADY PIKE ET AL.
No. 72.

BRIEF FOR APPELLANTS.

This is an appeal from a decree in admiralty of the circuit court of the United States for the eastern district of Wisconsin, affirming a decree of the United States district court.

The appellants were libellants in the court below, and their libel was dismissed.

The Case.

On or about the 24th day of April, 1866, at Shakopee, on the Minnesota river, in the State of Minnesota, one Wm. H. Anderson, in pursuance of a contract made with A. C. Monfort, master of the steamboat Lady Pike, loaded on board the barge Salmon, one of three barges belonging to and in tow of the Lady Pike, 6,753 25-60 bushels of wheat to be transported by water to Savannah, Illinois, and thence by rail to Chicago, Illinois.

The steamer having in tow the said barge Salmon and two other barges, descended the Minnesota river to its junction with the Mississippi, and proceeded down the Mississippi to the railroad bridge in course of construction

near St. Paul, where in attempting to pass between the piers, the barge Salmon struck one of the piers and was stove, and the wheat became a total loss.

The wheat was insured in the libellants offices, for the sum of $8,100, and they having paid the loss, libelled the Lady Pike to recover the value of the wheat.

The district court dismissed the libel (Rec., p. 108,) and on appeal to the circuit court the decree of the district court was affirmed, and an appeal taken to this court. (Rec., p. 122.)

The Question in the Case

is as to the liability of the Lady Pike for the loss.

The delivery of the wheat in good order, and the terms of the contract for its carriage, are alleged in the 3d and 4th articles of the libel (*Rec., p.* 2,) and are admitted in the 3d and 4th articles of the answer. (*Rec., p.* 7.)

The insurance is proved by F. L. Balch (*Rec., p.* 17,) and by W. H. Anderson. (*Rec., p.* 29.)

The payment of the loss and transfer of the shipper's claim to the insurance companies are proved by C. Etheridge (*Rec., pp.* 12, 19), and by W. H. Anderson. (*Rec., p.* 29).

The value of the wheat lost, $1.20 per bushel, $8,104, is proved by W. H. Anderson. (*Rec., p.* 29.)

That the loss was in effect total, appears to be proved by the depositions of L. Krieger, (*Rec., p.* 100,) and L. B. Gregg, (*Rec., p.* 101.) From these it seems that 200 bushels of wheat were saved dry and sold for near market price, say $200, and that all the wet wheat was sold to Gregg for $100. The total amount realized was thus probably a little upwards of $300—the expenses incurred in attempts to save it are not stated but probably absorbed the amount received. The depositions of Krieger, (*p.* 100,) Secrist, (*p.* 104,) Beatty, (*p.* 105,) Hill, (*p.* 106,) and Christy, *p.* 106,) prove that there was no possibility of drying or saving the wet wheat.

Upon these points there seems to be no contest. The question is as to the manner of the loss, whether it was as alleged in the answer, caused by an "unavoidable danger of the river," one of the perils excepted in the bill of lading, or by the act of God. To establish this fact the burden of proof is on the defendant.

The Pleadings.

The terms of the contract, as set up and admitted in the pleadings, required the delivery of the wheat in like good order as when received, "unavoidable dangers of the river and fire only excepted * * unto said consignees at the northwestern elevator at Chicago aforesaid," &c., &c., and the allegation is that the said master "did not so convey and deliver the same, although no dangers of the river or fire prevented him from so doing, but on the contrary so negligently and carelessly conducted himself in respect to said wheat, that through the mere carelessness and negligence and improper conduct of the said A. C. Monfort and his mariners and servants, said wheat became and was wholly lost and said barge with said wheat on board sunk in the Mississippi river." (*Rec., pp.* 2, 3.)

In their answer the claimants allege that the sinking and consequent loss were by an unavoidable danger of the river, and deny that the sinking was caused by any negligence or carelessness on their part or on the part of those navigating the boat or barges; and they say "that when passing through the piers in the Mississippi river in the upper end of St. Pauls, in the usual way and while in the usual channel for such passage, the said steamer and said barge was by a sudden gust of wind blown to the larboard so that the said barge Salmon struck the said pier on that side and was sunk thereby; that the said steamboat and barge Salmon were fully and completely manned and equipped and in all respects river worthy and were carefully and skillfully managed at the time of the injury." (*Rec., p.* 7.)

The opinion of the court is not in the record but is found in vol. 8. Am. Law Register, N. S., p. 614, and is printed in an appendix [A] to this brief.

The court bases its judgment on the following view of the facts and the law:

That the boat was properly manned and equipped, and was river-worthy.

That the boat was proceeding down the river at a rate of speed of seven miles an hour.

That the current was three miles an hour and in a line with the piers.

That the opening between the piers was 116 feet.

That the width of the tow was 105 feet.

That when within a boat's length of the piers a sudden gust struck the boat and forced it against the pier and stove the barge in question.

That the channel is divided by one of the piers, a portion passing between the piers between which was the course pursued by the fleet; and a portion passing between the adjoining piers which is wider but it was said was not then taken by tows on account of a sunken barge obstructing the passage.

That the boat was justified in approaching and passing the piers at full speed, as the better opinion is that the boat was more manageable at a high rate of speed.

That the loss occurred by the act of God, and the boat is not liable.

Assignment of Error.

The court erred in dismissing the libel, because the loss was not caused by any unavoidable danger of the river nor by the act of God, but by the negligence and incompetency of the officers of the boat.

I. The boat had not a competent crew and was not fit for the voyage, neither master nor pilots having the ne-

cessary knowledge either of the fleet they were managing or of the navigation of the river.

II. The pilot steered between piers Nos. 3 and 4; pier No. 3 was so far under water that the whole fleet might safely have passed over it, as was usually done in times of high water, but the pilot being ignorant of this aimed to pass midway between piers 3 and 4, which necessarily brought the tow within 6 feet of the pier it struck, whereas had the fleet been steered over pier No. 3 it would have passed 70 feet from the pier on either side, a distance too great to be overcome by the gust.

III. The fleet might have passed between piers 4 and 5 which are 151 feet apart, and so left a clear space of (151 minus 105 divided by 2) 23 feet on each side, a distance too great to be overcome by the gust. There was no obstruction in this channel. The sunken barge was not there till more than a year after the loss in question.

IV. The fleet approached the piers at full speed (10 miles an hour with the current) without at all holding up. Such speed was unwarrantable and improper, and was an efficient cause in producing the loss.

V. It was not, in fact, the wind that drove the fleet against the pier; it was the force of the current which ran rather across the piers at that point, aided by bad steering.

I.

The Boat was not fit for the Voyage.

A vessel is unfit for the voyage, unless she sail with a crew competent for the voyage, considering its length and the circumstances under which it is undertaken.

Abbott on Shipping, 344.

In Tait *vs.* Levi, 14 East, 481, where the master, "being ignorant of the coast," passed in the night the port to which he was destined, and ran into another in possession of the enemy and was captured, the court held "that the implied warranty to provide a master of competent skill

was not complied with by sending out one who was unable to distinguish between the two ports."

In the present case the pilots were grossly ignorant of the facts essential to the safe navigation of the river at that place.

1. Neither of them knew the width of the openings between the piers nor the width of the tow that was to pass through that opening. They both over-estimated the width of the opening and underestimated the width of the tow.

The distance between the piers was 116 or 117 feet. The aggregate width of the barges and boat was at least 105 feet, according to the opinion of the District Court. They were abreast. Supposing them to have been in the smallest possible space, the width of the tow was their aggregate width, say 105 feet; that left a space of 5½ feet on each side, or 11 feet in all.

Corydon Looney testifies, p. 76, ans. 1, "I am 39 years old; * * * I am a steamboat pilot by occupation; * * * I had charged of the wheel at the time the accident happened."

* * * p. 79.

"Q. 20. Do you know the width between those piers?

"A. 20. Shouldn't think it was far from 150 feet; between 140 to 150 feet.

"Q. 21. What was the width of your fleet, including boat and barges?

"A. 21. I should judge about 85 or 90 feet."

* * * * p. 84.

"Q. 72. If you had gone through, as you aimed to, without any gust of wind striking you, how far would your outside larboard barge have been from the piers, which in fact it struck?

"A. 72. I think probably 15 to 20 feet; she would have cleared that much.

"Q. 73. How far would your starboard barge have cleared

the break or boil in the water indicating the pier on that side?

"A. 73 I could not tell what distance, being where I was it was impossible.

"Q. 74. Did you not aim to run between the piers so that the pilot-house, in which you were, would be fifteen or twenty feet to the right or starboard side of the middle between the two piers; or did you aim to run through so as to be in the middle yourself?

"A. 74. We aimed to run through so as to have as much room on one side the fleet as the other, and not to have the steamboat in the middle; that would not do."

Alex. M. Grant testifies, pp. 67, 68:

"I am 41 years of age; * * I am a steamboat pilot, from St. Louis to Fort Snelling and Still Water; * I was on board of the Lady Pike, and was acting as pilot; * * * Mr. Looney was at the wheel at the time.

* * * p. 69.

"Q. 13. How much space had you on each side of you as you began to enter the piers, as near as you can judge?

"A. 13. As near as I can judge, we had about 30 feet."

* * * p. 73.

"Q. 66. I think you said that you thought that there was about 30 feet to spare on each side of the barges had the wind not struck you?

"A. As near as I could judge, that was about the distance."

Looney, p. 83, ans. 38, speaking of the turn-table pier, No. 3, says, "there was a break or boil over it; its exact location was visible."

Thus both the pilots supposed that the opening between the piers was 60 feet greater than the width of their fleet, when it was in fact only 11 feet. The difficulty was in fact five times as great as they supposed.

The captains were equally, if not still more, ignorant of the peril.

Engard was acting captain. He thought that there was 40 to 50 feet to spare between the starboard barge and pier (*p.* 50 *and* 90). On cross examination, he says the tow passed through a bridge higher up the river, and he thought the passage where the accident occurred 30 or 40 feet wider than the other, (*p.* 51, *ans.* 8.) That would make it at least 105 feet plus 30 or 40 feet.

Monfort was the regular captain. He says the distance between the Widgeon (the starboard boat) and the starboard pier was 30 or 40 feet (*p.* 54, *ans.* 54.)

2. It is doubtful whether any one of the four had ever before passed down through the piers.

Looney certainly had not. He says in his answer 34, p. 82, that he had never seen those piers before his voyage *up*, a day or two before. He was steering the boat at the time of the accident.

Grant most probably had not. He says (p. 69, ans. 1), that he had shipped in St. Louis ten days before, and this was his first trip on the boat. Being questioned about the height of the piers, he says he "did not take any particular notice as to the height," and that he has not seen them since, which would clearly imply that the occasion in question was the only opportunity he had had to gain the information desired.

Monfort says, "that was my first trip through them," (*p.* 56, *ans.* 48.)

Engard being asked what was the course of the current, towards which bank it set, answers I do not know, *did not take notice.* Being asked how fast *is* the current at the piers, answers I do not know that either; asked, "is the current straight with the piers," answers, "I do not know; I *did not* take notice," pp. 48, 49, a. 61, 62, 65; asked which way was the wind, answers "I do not know the points of the compass; don't know whether it was north, south, east, or west." Such ignorance one would think would be impossible in a pilot who had made more than a single trip.

3. The pilots were not acquainted with the current at the place of the accident.

It is proved that a current of considerable strength set towards the pier which the barge struck.

Davidson, p. 41, says it was intended to set the piers with the current, but it was not done exactly.

Snow, p. 23, at bottom, thus testifies:

"Q. What is the course of the current of the river between piers Nos. 3 and 4?

A. I think it runs diagonal with the piers. It sets off towards the 4th pier as you go in between the piers.

"Q. What makes it set over so?

"A. There is a bar extending out from the west shore, commencing at the ferry 1¼ miles above the piers. It runs down nearly to the piers; it may stop 50 feet above the piers. The channel in running down the east shore and coming down to the point where we start out to make the crossing between the piers. There is a gravel or stone point on the east side which makes out into the river a little ways which throws the force of the current over to this bar on the east shore. The current striking that bar, it rebounds and runs diagonal across the piers towards the east shore. I have had to pass through those piers so often with heavy tows, both up and down, that I have taken great pains in trying to learn the course of the current there. A raft will always follow the strongest course of the current, unless pulled out of it by oars, and I noticed that they would draw over from the east shore to the foot of this bar on the west shore, *and would then start the other way.* I have often seen a boat coming up the river, and would see one of these rafts coming, and I would naturally suppose it would come through the steamboat channel, that is, the low water channel between the 3d and 4th piers; it would appear to me so, and instead of going through them they would suck through the 4th and 5th piers. I have also noticed the currents drawing off in that

way going up with a light steamboat and light barges in a calm still day."

Again p. 26. "Of a calm day a boat in going through between piers 3 and 4 will drift from four to six feet towards pier No. 4."

Again, p. 27. "I have frequently run this west shore before these piers were built, and a boat would naturally draw off with me from the west shore, unless I held her a little into the shore to keep her from going off; that is going up the river, until I had got opposite the foot of the bluff on the east shore. This would be the case 100 yards above the piers."

Monfort, captain of the boat, says, "at that stage of the river, it (the current) set upon the St. Paul side," p. 56, ans. 8, 47.

And again—

"Q. 2. You say at high water the current sets towards the St. Paul shore, how is it when the water is low?

"Ans. 2. When the current or river is confined within its banks, I presume the current is straight; but at that stage of the river the bottoms were overflowed, and the current set across the bottoms and towards the bluff quite strong." P. 61.

Yet of this important current the pilots seem to have been profoundly ignorant.

Grant, pilot, p. 69, ans. 15, the current was "very nearly straight or parallel with the piers." At p. 71, ans. 26, he says it was "a little towards the one we struck, very little."

Looney, the pilot at the wheel, thus testifies:

P. 81, q. 23. "Does the current pass between the piers straight, that is, at right angles to the direction of the bridge.

A. 23. "I think it does; I think the piers lie on a line with the current at that bridge."

Engard, the "running captain," being asked, p. 49,

q. —, "is the current straight with the piers there," answers, "I don't know; I did not take notice."

Monfort, unfortunately the only one of the four who did know of that important current, was not in charge of the boat, but was on one of the barges, and had left the pilot in ignorance of it. Rec., p. 53, ans. 13.

II.

There was gross negligence in passing between the 3d and 4th piers and midway between these piers. There was a wider passage between piers 4 and 5, and there was a passage over pier No. 3.

The channel is divided by the 4th pier. On the right is an opening of 116 feet between pier No. 4 and No. 3, the latter being the turn table pier, and this was the opening selected for the passage on this occasion. On the left of pier No. 4, and between that and No. 5, was an opening of 151 feet. (See the map proved by Morris, p. 14, Lauderdale, p. 14, Spicer, p. 21, Snow, p. 23, J. Houghton, p. 95, G. Houghton, p. 96.)

The tow or fleet passed between the turn table pier (No. 3) and the one next north (No. 4.)

Looney, pilot, at the wheel, p. 82.

"A. 35. The pier we struck was out of water. * * There was one that was not out of water of those between which we ran."

P. 83.

"Q. 38. Was any part of it visible, or any break over it in the water to show where it was?

"A. There was a large break or boil over it, its exact location was visible."

Grant, pilot, says, p. 68:

"Q. 6. In what way were you entering the draw prior to this gust of wind?

"A. 6. As near as I could tell about the center between

the break of a pier that was under water and the one we struck."

Again, p. 70:

"Q. 6. Between which of the piers did you run?

"A. 6. Between the pier that was sticking out fo the water on the St. Paul side, and the break of one to the right of it coming down."

The distance from the turn table (No. 3) pier to the one next north or east (No. 4) is 116 or 117 feet—the map makes it 117; the distance from pier No. 4 (the first from the turn table) to pier No. 5 (the second from the turn table,) is 151 feet.

No doubt many boats took the passage between Nos. 3 and 4, and it could with perfect safety be taken by tows not too wide.

But the passage between Nos. 4 and 5 was also the usual passage in 1866, when this loss occurred.

J. Houghton, for respondents, testifying March 19, 1869, says: "Prior to the spring of last season [1868] *the usual channel* for steamboats passing up or down the Mississippi passed this bridge between the *first* and *second* piers *from* the turn table pier towards the St. Paul shore. * * * I should judge the distance in the clear in the wide space *where we used to run before last spring* [1868] was about 140 feet. * * * During *the last season* [1868] boats have usually run between the turn table pier and the one next to it on the St. Paul side [between Nos. 3 and 4.] The *change* was made because a barge was sunk in the former channel making it narrow."

Spencer, for libellants, (pp. 21, 22,) testifies to the use of both channels, preferring that between piers 4 and 5 unless the water be high enough to enable boats to run over the turn table pier, which he says is the case in high water.

III.

But the evidence shows that at the time of the accident

there was water enough on the turn table pier to enable the tow to run over it.

The diagram, p. 38, shows that pier No. 4 is 14 feet higher than the turn table pier. The witnesses generally say that pier 4 was five, six or seven feet out of water, at the time of the accident.

Looney, p. 83, ans. 42, says the pier struck was five to seven feet out of water.

Grant, p. 70, ans. 9, thinks pier 4 was seven feet out of water.

Spencer, p. 21, says that when the water is just over the bottom there is four feet of water on the turn table pier.

Snow, p. 24, says there is five feet.

Monfort, p. 56, ans. 46, says the river was then over the banks, unusually high.

J. Houghton, p. 95, says at the time the barge of the Lady Pike was sunk there was plenty of water anywhere through the bridge for navigation. She could not have found less than ten feet of water anywhere there by the bridge.

The soundings in the map show the least depth of water on either side of the turn table pier to be three feet one inch. The turn table pier was in three feet seven inches of water, when the map was made, and was three feet seven inches high, *i. e.*, up to the surface of the water. Pier 4 was twenty feet high and in four feet of water. If then there was ten feet of water at the shallowest place, there was ten feet six inches at the turn table and (10ft. 6in.—3ft. 7in.) six feet eleven inches over the turn table.

If the pier that was struck was seven feet out of water there was (20ft.—7 ft.—3ft. 7in.—5in.) nine feet of water over the turn table pier.

The tow then could safely have passed over the turn table pier and thus there was the entire passage between piers 2 and 4, in all 264 feet, (two openings of 117 feet and the breadth of the pier thirty feet,) but instead of availing himself of this, the pilot at the wheel, Looney, having said

(p. 82, ans. 35, and p. 83, ans. 38,) that he ran between the pier he struck and one to the starboard under water, and that there was a large break or boil over this last so that "its exact location was visible," proceeds to say (p. 85, ans. 73, 74,) that in passing, he aimed to have as much room on one side as the other—that is, he aimed to run within six feet of pier No. 4.

But neither pilot knew the depth of water on the turn table pier.

Grant, p. 70, ans. 8, can only say that from the appearance of the boil or break he did not think there were four feet of water on it. Looney, p. 82, ans. 37, cannot tell at all.

The attempt to run within six feet of pier No. 4 was a risk entirely unnecessary, and would never have been taken had the pilots known, as they ought to have known, the depth of water over the turn table pier, and they ought to have known it because it was a common thing for boats to run over that pier in times of similar high water.

The testimony of Houghton above cited, who is the only witness who mentions the sunken barge obstructing the passage between piers 4 and 5, shows that the district judge was entirely mistaken in supposing that obstruction to have existed in 1866. It did not exist till 1868.

IV.

The steamer approached and endeavored to pass through the piers at full speed, without holding up at all.

This was wrong, 1st, because of the narrowness of the passage compared with the width of the fleet; and 2d, because the passage was rendered dangerous by winds and currents.

It is not enough for the defendant to show that the accident was inevitable at the moment it took place.

This court has said: Most collisions are inevitable at the moment they occur, but the primary rule is that precautions must be seasonable. The Merrimac, 14 Wall., 199, 203.

And again: It frequently happens in cases of collision that the master of the vessel could not have prevented the accident at the moment it occurred, but that will not excuse him if, by timely measures of precaution, the danger could have been avoided.

"Inevitable accident is where one vessel, doing a lawful act, without any intention of harm, *and using proper precaution to avoid danger*, unfortunately happens to run into another vessel." D. Lushington in the Europa, Liv. Law Mag., Dec., 1850, p. 499.

That it was dangerous to take a tow 105 feet wide through a passage 117 feet wide, seems fully established by the evidence, and a seasonable precaution against such danger was to change the position of the barges, and thereby lessen the width of the fleet. This was not done.

As to the danger of attempting the passage:

Lauderdale, pilot, p. 15, does not think a tow wider than 90 feet should be taken through, and then only in a calm time; would always go slow; has gone through downwards three or four times. p. 16.

Spencer, pilot, would come down slow, and would want ten feet on each side.

Snow, a very experienced pilot, (pp. 23 and 24,) says he has had to pass these piers often with heavy tow; that he has studied the current; says he would run slow. (p. 25.) A boat like the Lady Pike ought not to take more than two barges between turn table pier and No. 4; it would not be safe; might take four barges *over* the turn table pier if enough water on it.

Bigelow, pilot from St. Paul to Minnesota River, p. 111.

Never took a tow wider than 90 feet; would not think it safe to take so wide a tow through at full speed; would stop the engine and go slow.

Johnson, pilot, (p. 113,) goes from St. Paul to Mendota three or four times every season; would go down slowly until between the piers, and properly shaped, then through fast; ought not to go through with wider tow than one hundred feet; on a windy day would want 15 feet on each side.

Brock, pilot, (p. 117–18,) would always go slow if he could, but when the wind is blowing, may have to go with full head of steam—say six or seven miles an hour (which, however, is not the ordinary speed of the boat he is speaking of, the Sheridan.) At no time, says he, is it so safe to go with a full head, as to go slow; "but the winds sometimes make it necessary." In going through all bridges, he makes it a practice to go slow.

Our researches fail to find a single expression of opinion by any witness that it would be safe to run between the turn table pier and the next pier, (No. 4,) at ordinary speed, with a tow as wide as 100 feet.

But if it was safe to do so at times of calm, this particular locality was known to be subject to gusts of wind, and especially at the season when the accident took place.

Grant says, p. 68, ans. 4, that such gusts often come up suddenly in that country, *after the wind has blown through the day and is dying out*, which were precisely the conditions existing on the occasion in question.

Looney says, p. 77, ans. 2, that such squalls are very common in that country.

Bell, p. 99, describes the locality, and says he has often found wind there when not felt elsewhere on the river on account of the bluffs, and then it is too late to get back.

Houghton, p. 28, says the same.

Added to these dangers were peculiar defects of the Lady Pike.

She was an awkward boat to handle, especially in a side wind.

Snow, p. 24, has often noticed the Lady Pike; thought she was an awkward boat to handle.

Grant, p. 70, ans. 11, 12, says she steers easily, except in a side wind, then does not steer so well. *She would have handled the barges better if he had been half loaded.*

Foster, p. 67, says the same.

Therefore the barges had to be put abreast, making so great a width. They could not be managed ahead, because the boat was light, (Monfort, pp. 59, 64, ans. 1.)

Claimant's witnesses say it was proper to run fast, because the boat thus was more manageable or handled best. In this they mean simply that she *steered* best; they could not mean that her speed could then most easily be checked, or that she could then be most easily backed.

Granting then that at full speed, the steamer answered her helm better than at slower rate of speed, does that single consideration govern all others? Collisions are to be avoided, not always by steering clear of the obstacle; it may be necessary to back out of a dangerous position, and is it right to cut off this resource?

Prudent pilots say that in going through bridges, they go slow in order that they may back if necessary.

In the 9th of Wallace in several cases the court condemned steamers for running at high rate of speed in almost every variety of case.

In entering a crowded harbor—the Corsica, 9 Wallace, p. 634.

In passing a crowded thoroughfare—the City of Paris, 9 Wall, 638, and see 18 How, 223, 225, where a speed of eight to ten miles an hour is declared grossly reckless.

In running into port—the Portsmouth, 9 Wall, 686.

In passing between vessels in the river—the Syracuse 9 Wall, 675.

In this last case, the Rip Van Winkle seems to have had a clear passage of at least 150 feet besides her width. She was that distance from a vessel on her right, and was run into by the Syracuse on her left. Her owner libelled the Syracuse, yet she was found in fault in attempting to pass vessels under such circumstances at a speed of seventeen miles an hour. The court said: "The attempt of the steamer, under such circumstances, to pass other vessels, and in such close proximity to the Syracuse, at a speed of seventeen miles an hour was gross and wanton recklessness. * * * She had no right thus to hurl herself like a projectile into the midst of vessels before her, taking the hazard of the consequences, and thus imperilling herself and them with all the lives and property on board."

"It may be a matter of convenience that steam vessels should proceed with great rapidity, but the law will not justify them in proceeding with such rapidity if the property and lives of other persons are thereby endangered." [Lushington.] The Rose, 2 W. Rob, 1.

V.

But it was not the force of the wind that drove the boat against the pier.

There was two modes of action by the wind upon the boat.

1. The wind had a tendency to make the boat *flank*. This motion is that of a revolution around the centre of gravity; it tended to revolve the boat and bring her head to the wind.

2. The wind also tended to drive the whole mass before it giving it a motion of translation.

Now it was not the flanking motion which caused the disaster. The barge which struck was 120 feet long, and its bow was even with the bow of the steamer. It struck nearer its bow than its stern. The point of contact was, therefore, *before* or in advance of the centre of gravity;

and consequently the place which struck would by a revolving motion merely have been thrown further away from the pier instead of being thrown against it.

Then the stroke must have been produced by a motion of translation—a motion which moved the whole mass.

What produced that motion? A competent and sufficient cause was the current which set across the river from the south side towards the north or St. Paul side, as testified to by Monfort and Snow. That current bore against the pier, and, as Snow says, would carry a boat or raft several feet while passing the pier. Of this current the pilot who was steering confesses himself ignorant, and consequently he could have made no allowance for it.

If that current was moving but a mile an hour across the heads of the piers, it would, while the boat was running sixty feet, overcome the distance at which she had entered the piers. The evidence is that the tow was midway between piers 3 and 4, when the bow of the barge was opposite the end of the pier. She ran sixty feet nearly before she struck. She was going, with the current, ten miles an hour, and in running sixty feet would drift six feet, thus overcoming the entire space between her and the pier when she entered.

But we maintain further that the wind described by the witness was incapable of overcoming the distance between the pier and the boat during the time it acted.

Every witness for the defence speaks of the wind as of a few seconds duration, and of very little force.

Engard, p. 50, ans. 89: "Just a little puff of wind; we had several that day."

Monfort, p. 58, ans. 54: "A sudden squall, quite sudden, and not severely hard."

Grant, p. 68, ans. 4: "A light flaw or gust of wind."

Looney, p. 77: "A smart squall"; "Very common in that country"; p. 84, "a mere dash of wind" over in less than a minute.

Pensinger, p. 62, ans. 57, (speaking of the wind before the gust in question,) "It came in little squalls; they were not violent.

Pensinger, p. 96, ans. 21: "It did not careen the boat at all."

Grant, p. 73 and 55: "It did not [careen the boat]. It was not strong enough for that."

"Q. 58. Would it have bothered you running down from Fort Snelling?

"A. 58. But very little.

"Q. 59. Did the boat drift across the current or quarter with it?

"A. 60. The wind blew her more across than any other way."

First, then, we have the fact that the boat did not careen; that the blast was not strong enough to careen her; and yet we are told it was sufficient to drive her 6 feet in a few seconds, together with her barges, which were deep in the water, and hardly touched by the wind. We say this, on its face, is a physical impossibility. The resistance to the careen would be almost nothing; the boat was light, 21 feet out of water, and only 2 feet or 26 inches in it.

Second, the weight and draft of barges offered an immense resistance to the lateral motion. They carried 600 tons of wheat alone, (20,000 bushels, of 60 pounds each.) If all the barges and steamboats together weighed as much more, and this cannot be doubted, there was a mass of 1,200 tons to be driven.

Third, when a vessel is *in motion*, the lateral pressure of the wind abeam or on the quarter, causes so little leeway, that in calculating a ships position it may safely be disregarded.

In Falconer's Marine Dictionary, article Leeway, after discussion to show that the leeway is diminished by the speed of the vessel, he says leeway is very inconsiderable,

except when the ship is close hauled, and may be disregarded when the wind is large.

"Large" in the same work is defined to mean, when the wind is on the beam or quarter.

This is the case with sailing ships, where the proportion of exposed surface is far greater than in this case—many times as great—for the three barges showed probably not more than one-fifth of their bulk above water, and the resistance to lateral motion was increased several times by the separate bodies of the barge and boat.

Moreover, in this case, the wind was not directly on the beam, but "came aft a little; that is it came a little down the river." *Engard, p.* 50, *ans.* 81.

A very strong, if not conclusive, confirmation of these views may be drawn from the physical laws of motion.

Let us assume—what we collect the evidence to prove in appendix B—the following facts:

1. The squall struck the boat just as the bow of the barge was opposite the pier.

2. The boat was running with the current 10 miles an hour.

3. The barge struck the upper edge of the pier in less than half her own length, which was 120 feet; in other words, the barge ran less than 60 feet while drifting 6 feet.

4. The broadsides of the boat and barges exposed to the wind showed not more than 3,360 square feet.

5. The boat, barges and cargo weighed over 600 tons.

Now if these are facts, it would have required a wind of the violence of a hurricane to have moved the boat sideways 6 feet in five seconds.

The laws of motion are such that where a constant pressure expressed in pounds operates upon a mass measured in pounds, and the pressure and mass are equal, the motion produced is 16.1 feet in the first second of time, and for every other period of time 16.1 feet multiplied by the square of the time in seconds. That is the case of a fall-

ing body, when the mass is, say, of one pound, and which presses downward, of course, with the weight of a pound, if suffered to fall freely.

If the same mass, say one pound, were driven horizontally with the same pressure it would move at the same rate, and it would move in 5 seconds (5 by 5 by 16.1) 402½ feet.

To drive it 6 feet in the same time would require only 6-402½, or 1-67 of its own weight, and to drive 600 tons 6 feet in 5 seconds would require 1-67 of 600 tons, or 9 tons.

If nine tons be diffused over the 3,360 square feet exposed to the wind, it gives upwards of 5.3 pounds to the square foot.

Now in a reputable work on seamanship, written by an officer of the United States navy, (Luce on Seamanship, Ed. of 1860, p. 514,) it is stated that a pressure of from 3.126 to 4.689 pounds indicates a strong gale requiring close reefed top sails and storm sails, and having a velocity of 32 miles an hour.

Now surely it cannot be contended the gust described in the testimony was more than such a gale, and if not stronger than this, *it would not have sufficed to transport the wheat alone* the distance in question, leaving out of the question the weight of the steamer and barges.

But if to this computation we add the following particulars, it will be seen that the resistance to be overcome was far greater, requiring many times the force of such a gale.

1. We assume that the weight of steamer, barges and cargo was 600 tons; but the wheat alone weighed 600 tons (20,000 bushels at 60 pounds.) If the steamer and the barges altogether weighed as much as the wheat, the force required to move it would have been 10.6 pounds pressure.

2. We assume the whole broad side of the steamer to be closed throughout its whole length and present a solid obstacle to the wind; it is safe to say that one-third of the

entire side was open; if so, to get the pressure required the wind must have blown with a force of 15.9 pounds per foot, for, 2 by 15.9 equals 3 by 10.6.

3. We have assumed that the wind came directly across the river and struck the boat at right angles to its course; whereas the wind came a little down the river as the witness Eugard says. This is almost too indefinite to turn into figures. Supposing however the wind to have struck the boat at an angle of 60 degrees, *i. e.*, one-third of the way around, its force would be as the sine of 60° to radius or 86 to 100, requiring a force of about 20 pounds in the wind to exert 15.9 pounds on the boat.

4. But, above all, we have assumed that the mass moved with perfect freedom in space, as if suspended in the air, and moving with the wind. To the contrary of this the boat and barges were embedded in the water, the boat drawing 26 inches and the barges 4 feet; and exposing, in all, a surface of 1760 square feet to the action of the water, a fluid nearly 800 times as heavy as the air, and at equal velocity exerting 800 times the pressure on the same extent of surface, or, on half the surface, 400 times the pressure. The moment the mass began to move, the resistance was developed, but the calculation of its value is too abstruse to follow.

One other view of this subject:

If the fleet had been placed within six feet of the pier, and at rest, with its bow directed to the pier, and its engines started, their whole power could not have driven the boat to the pier in five seconds of time.

Grant says, in substance, that if the engines of the boat are started, she will not move more than 10 feet in 3 revolutions. Suppose the revolutions to be 20 per minute—3 revolutions consume 9 seconds. If the boat moves 10 feet in 9 seconds, she will move $1\frac{1}{2}$ inches the first second, and in any number of seconds, the square of that number multiplied by $1\frac{1}{2}$, so that in five seconds she would move (5 by 5 by $1\frac{1}{2}$,) $37\frac{1}{2}$ inches only, or 3 ft. $1\frac{1}{2}$ in.

Conclusion.

We submit that we have established the following errors committed by the court below, viz., in ruling:

That the crew was competent, when neither the master nor the pilots knew the dimensions of the fleet they were conducting nor those of the passage through the bridge.

That ten miles an hour was a reasonable rate of speed to pass through the bridge, because at that rate the boat steered best.

That it was reasonably safe to attempt, with a fleet 105 feet wide, to run at full speed within six feet of a stone pier on a windy day.

That the passage between piers 4 and 5 was obstructed at the time of the accident.

That the wind drove the fleet against the pier and the loss was by the act of God. And we submit—

That the decree of the circuit court should be reversed, and the cause remanded with instructions to enter a decree for the libellants.

J. M. CARLISLE,
J. D. McPHERSON,
For Appellants.

Supreme Court of the United States,

OCTOBER TERM, 1874.

The Germania Insurance Company et als.

vs.

Steamboat Lady Pike et als.

Appeal from the Circuit Court of the United States for the Eastern District of Wisconsin.

BRIEF FOR APPELLEES.

T. D. LINCOLN,

Of Counsel for the Appellees.

Robert Clarke & Co., Prs., 65 West Fourth St., Cin., O. [*April*, 1874.

Supreme Court of the United States,

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The Germania Insurance Company et als.

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Appeal from the Circuit Court of the United States for the Eastern District of Wisconsin.

BRIEF FOR APPELLEES.

STATEMENT OF THE CASE.

This was a libel filed on the 9th of October, 1866, in the District Court of the United States for the District of Wisconsin, against the steamboat Lady Pike, her engines, etc., and the barge Salmon, and against all persons lawfully intervening, in a cause of damage civil and maritime.

The libelants were insurers upon a cargo of wheat shipped by one William Anderson, in bulk, upon the barge Salmon, at Shakopee, Minnesota, to be carried upon the said barge, in tow of the steamer Lady Pike, from the place of shipment to Savannah, on the Mississippi river, and

from thence by railroad to Chicago, Illinois, where it was to be received by said Sherman, Hall & Pope for said Anderson. Shakopee is on the Minnesota river, some —— miles above St. Paul. The barge contained 6,753 25-100 bushels. She was one of three barges in tow of the Lady Pike, all loaded by Anderson.

In passing between the piers of the railroad bridge which crosses the Mississippi river about three miles above St. Paul, the barge Salmon was blown against one of the piers by a sudden gust of wind and was sunk thereby, and the wheat almost entirely lost.

The libel was to recover the value of this wheat less the salvage.

The libelants, sundry insurance companies, claimed that they had insured it and had paid the loss. The wheat was shipped in bulk, and under a bill of lading excepting the dangers of the river, fire, etc.

The libel sets up the promise to carry the same, and charges that the master of the Lady Pike, A. C. Montfort—

"Not regarding his duty in that respect, nor his promise and undertaking to carry and deliver said wheat aforesaid, did not so convey and deliver the same, although no danger of the river or fire prevented him from so doing; but, on the contrary, so negligently and carelessly conducted himself in respect to said wheat, that through the mere carelessness and negligence and improper conduct of the said A. C. Montfort and his mariners and servants, the said wheat became wholly lost, and said barge, with wheat on board, sunk in the Mississippi river." *Record*, p. 3.

The libel proceeds in a cause, not of contract, but in a cause of damage (*Record*, p. 2), and the whole libel is framed upon a cause of damage for careless and negligent navigation.

The steamers and the barges are not declared to be common carriers, nor is there any proof in the record that they were so.

The answer, in the third article thereof, alleges as follows:

"*Third.* That on or about the 21st of April, the said steamer Lady Pike was laying at Reid's Landing, at the foot of Lake Pepin, with three barges in tow of said boat, belonging to the Western Union Railroad Company, and bound for the Minnesota river; that the captain of said steamboat, A. C. Montfort, then made an arrangement with one T. J. Duffy, by which the said barges were to be loaded with wheat in bulk by him, and be carried therein, the said steamer towing the same from Shackopee to Savannah, and from there the said wheat was to be carried forward to Chicago by said Western Union Railroad Company, all at twenty cents per bushel; that the said steamer, with the said barges, proceeded to Shackopee, on the Minnesota river, where the said Duffy, or some one acting for him, caused the said three barges to be loaded with wheat in bulk; that claimants do not know how much wheat was placed by the said shippers in the barge Salmon, but suppose the amount alleged in the libel to be correct.

"They further allege that the said wheat was to be thus transported in bulk in the said barges so loaded by the shipper, and that the consignors received a bill of lading to that effect; that none of said wheat was shipped on said boat, but it was agreed and understood to be taken by said steamboat in the barges in bulk; that the said boat was not prepared for or fit to take wheat on board of it in bulk, as was known to said Duffy and the shipper." *Record*, p. 7.

The fourth article of the answer, immediately following the above, is as follows:

"*Fourth.* In answer to the fifth article of the said libel, the claimants allege that the said steamboat and barges left Shackopee in good order, and proceeded on the said trip *with all possible care, caution, and skill;* that when passing

through the piers raised in the Mississippi river, at the upper end of St. Paul, in the usual way, *and while in the usual channel for such passage, the said steamer and said barge was, by a sudden gust of wind, blown to the larboard, so that the said barge Salmon struck the said pier on that side and was, sunk thereby;* that the said steamboat and barge Salmon were fully and completely manned and equipped, and in all respects river-worthy, and were carefully and skillfully managed at the time of injury, and that the said sinking and consequent loss was an unavoidable danger of the river. The claimants deny that the said sinking was caused by any negligence, or carelessness, or improper conduct whatever on their part, or on the part of those navigating said boat or barges. The claimants further allege that the said sunken barge and wheat was taken due care of by proper parties until the same was received by the said Duffy, his agents and assigns, and a large part thereof saved, and a still larger part should have been saved by them. They further allege that the said loss was *not caused in any respect by any want of care, skill, or other improper conduct by them or their agents*, and they deny that they are liable therefor." *Record*, pp. 7, 8.

The steamer Lady Pike is not declared against or proven to be a common carrier. The first article of the libel states that "she was licensed and enrolled for the coasting trade," and "engaged in the business of commerce and navigation, between ports and places in different States of the United States, upon the waters of the Mississippi river, navigable from the sea," etc.

She was in fact unfitted for carrying in the regular way, but was towing the barges of the Chicago Western Union Railroad, and giving a bill of lading, which bound that railroad company.

The steamer alone was seized, and she alone is here defending. Process to the marshal went against her alone. *Record*, pp. 4, 5.

By having the wheat towed in bulk in barges, the

shipper saved from eight to ten cents per bushel in the carriage thereof, besides saving the labor and expense of sacking and use of sacks. This is shown. *Record*, pp. 54, 55.

The case was fully argued and considered by the district judge, who dismissed the libel on the 6th of July, 1869. *Record*, p. 108.

This dismissal was upon the ground that the vessel was not in fault, but that the loss was caused by a sudden gust of wind, as set out in the answer, and was therefore an act of God. *The Lady Pike*, 2 Bis. C. C. 141.

An appeal was taken to the Circuit Court, and new and additional evidence taken by the appellant, without notice to the appellees. See *Record*, pp. 111–114, and still further testimony upon notice. *Record*, pp. 116–120.

The case was then fully argued and considered by JUDGE DRUMMOND, in the Circuit Court, and he affirmed the decree dismissing the libel, on the 22d of April, 1871. *Record*, p. 122.

On the 2d of November, 1872, the libelants appealed the case to this Court. *Record*, p. 122.

I.

THE CASE WAS ONE OF FACT MERELY.

This being a case presenting a question of fact merely, and there having been two full hearings—one in the District Court and one in the Circuit Court on appeal—and upon both hearings the case having been decided against the libelants upon the merits, this Court will not reverse the de-

cree below, except upon a very clear case made. This is the well-settled practice of the courts of the United States and of this Court.

The Spray, 12 Wal. 367.
The Hypodrome, 6 Wall. 223.
Newall v. *Norton & Ship*, 3 Wal. 267, 268.
P. W. & Balt. R. R. Co. v. *P. & Hde. G. W. T. Br. Co.*, 23 How. 219.
The Ship Marcellus, 1 Black, 417.
The Sunswick, 5 Blatch. C. C. 281.
The Narraganset, 1 Blatch. C. C. 217.

II.

THE CONTRACT WAS TO CARRY THE GRAIN IN BARGES TOWED BY THE LADY PIKE, AND THE SHIPPER TOOK THE RISK OF SUCH CARRIAGE.

That the contract was for such carriage not only appears in the record, but it appears that Mr. Anderson was present at Reid's Landing, and saw the Lady Pike and the barges, and was to load them all; that he sent his agent, Duffy, upon the boat from Reid's Landing, where the contract was made, to St. Paul, upon the Lady Pike.

CAPT. MONTFORT says:

"*Q.* 5. Did you make the bargain for the shipment of the wheat in barges; if so, by whom was it made?

"*A.* 9. I made the contract with a man whose name is unknown to me at present, at Reid's Landing, at the foot of Lake Pepin. Mr. T. J. Duffy was there at the time, and went up with us to St. Paul. *It was for the shipment of wheat in bulk in barges.*

"*Q.* 6. State where the barges were at the time you made the contract, and whether or not the party that made the contract saw them?

"*A.* 6. The barges were laying alongside of the boat, and the contract was made for the wheat to go in the barges exclusively in bulk. The party saw them that made the contract." *Record*, pp. 52, 53.

Further on, this witness says:

"*Q.* 9. What was the character of the barges; that is, were they made for the purpose of being towed altogether, or were they made so that they could be rowed and floated?

"*A.* 9. *They were built for towing exclusively, and had no means of being floated.*

"*Q.* 10. Were the barges open and visible to the parties when said contract was made, so that the condition of the barges in this respect was known to them?

"*A.* 10. The barges were visible, and he knew the condition of them in this respect." *Record*, p. 53.

Now, under the contract, the exception of the dangers of the river and fire excludes all the natural risks attending the carriage of wheat in this way upon that river. The shipper got it thus carried at greatly reduced freight, and insured against these risks, and it was for this and other risks that the libelants received their premium.

That this risk was fully known and accepted by the shipper, and that he got full consideration therefor in the lessened freight for the carriage, is clearly shown. Captain Monfort, further on, says:

"*Q.* 28. Had you any other barges except these received under the contract made at Reid's Landing?

"*A.* 28. We had no other freight except these in the barges referred to, and *no other barges.*

"*Q.* 29. Could any portion of that wheat have been taken on the boat in bulk?

"*A.* 29. The contract was made to carry the wheat on the barges in bulk exclusively, and it could not have been

carried on the boat in bulk, as she was not sealed. The boats on the western rivers are never sealed; and wheat is never carried in bulk upon them, but always in sacks and packages. The barges were sealed, and made exclusively to carry grain in bulk.

"*Q.* 30. What is the difference between the price for carrying wheat from Shakopee to Chicago, if any, supposing in the one case the same was to be carried in bulk and towed as you carried this, and the other carried in sacks and packages upon the boat, and handled as packages should be? [Objected to.]

"*A.* 30. I suppose *from eight to ten cents a bushel;* that is, it would be less in bulk and more in sacks. I mean the price that the carrier would receive.

"*Q.* 31. What else does the shipper save besides, in the money paid to the carrier for carrying it?

"*A.* 31. He saves the labor and the use of sacks." *Record*, pp. 54, 55.

This shows that the steamer Lady Pike was engaged in what was understood to be substantially a towage service, from Shakopee to Savannah; that the shipper took upon himself, and assented to, all the natural river risks of this mode of carrying, and that he received a large compensation in lessened charges for it, a part of which he paid to the underwritees for taking these and other risks upon themselves.

The appellees are not charged as common carriers. The Lady Pike could hardly be so charged, for it is quite clear that she was engaged in that which was substantially a towage service. So far as the first part of the trip was concerned, that is what it was. The libel is not for a cause of contract, but "in a cause of damage," and though a contract is alleged, it is as inducement merely. The ground of the "cause of damage," is, the negligence and carelessness in the carriage of the wheat. Whatever view may be applied to it, it is clear that all that the Lady Pike was to

do was to tow these barges. It is for that reason that the libel is framed as it is.

In this view of the case, the burden is upon the libelants to show the carelessness.

And the appellees were bound for no more than ordinary care.

But these last positions are really immaterial in the case, as it stands before the Court, as I shall now proceed to show.

III.

THE LOSS WAS CAUSED BY THE ACT OF GOD.

This answer sets up that the loss was caused by a sudden gust of wind, and that there was no want of care and skill. This point is clearly made out in the proof—is, indeed, free from any question of fair dispute, and is free from any contradictory evidence whatsoever.

Captain Monfort testifies as follows:

"*Q.* 14. Will you state how the accident occurred, and what caused it?

"*A.* 14. It was caused by a sudden gust of wind blowing the boat toward the pier. I do n't know any other cause for it.

"*Q.* 15. How was the boat pointed, and entering those piers, before the wind struck her; and would there or not have been any difficulty had there not been any wind?

"*A.* 15. She was coming directly down the river, *and was steered so as to miss the piers;* and would have done so had not the wind have blown her toward the piers. . . .

"*Q.* 18. Had you had any wind that affected the run-

ning of your boat since leaving the bridge at the fort, until this gust struck you at the piers?

"*A.* 18. None that was perceptible.

"*Q.* 19. Was there any notice of a wind of that kind from the clouds, before entering the piers? Did you anticipate anything of the kind?

"*A.* 19. There was none at the time. We did not anticipate anything of the kind at that time. *Record*, pp. 53, 54.

On cross-examination, this witness says:

"*Q.* 45. How far above the piers were you when the wind struck the vessel, just before collision?

"*A.* 45. We were right directly opposite them. *I was on the barge Salmon, and was certain that they would miss them.*" *Record*, p. 56.

The barge on which Capt. Monfort was, was somewhat ahead of the pilot-house of the steamer. It was the barge injured.

CORYDON LOONEY, the pilot at the wheel at the time, gives this account of the accident:

"I think the accident was caused by a sudden gust or blast of wind that struck the boat just as we entered the piers. This wind struck the boat just as we were entering the piers, and drifted us over against them. We were positive, both of us, before this wind struck us, that we would go through without trouble. I refer to Mr. Grant, who was in the pilot-house at the time, standing at the wheel with me. This was quite a smart squall, and are very common on the upper rivers." *Last half of Q.* 2, *Record*, p. 77.

In answer to question 3, he says:

"All that could be done was done. When we found that we were drifting, we put our wheel to the starboard to hold her off the pier. When the wind struck us it was too

late to have backed out. It first struck us about the time we were entering the piers.

"*Q.* 4. State what, if any, wind there was to trouble you or affect the running of the boat after leaving Fort Snelling, and prior to the time this squall struck you.

"*A.* There was no wind to affect the running of the boat after leaving Fort Snelling, until this squall struck us." *Record*, pp. 77, 78.

On cross-examination, this witness says:

"*Q.* 61. What direction did the flaw of wind you have spoken of come from?

"*A.* I could not tell; I don't know what direction the river runs there. It struck us broadside—probably a little aft.

"*Q.* 62. Did it blow from the larboard to the starboard side?

"*A.* It struck us on the starboard side.

"*Q.* 63. How long did the gale last?

"*A.* I could not tell; a very short time.

"*Q.* 64. Was it over before the barge was tied up?

"*A.* Oh, yes; a long time.

"*Q.* 65. Did this gust last more than a minute?

"*A.* I should n't think it did; hardly so long; it was over very quick, I know; it was a mere dash of wind." *Record*, p. 84.

ALEXANDER M. GRANT was an old pilot on that part of the river, and was in the pilot-house with Looney, and was standing at the pilot-wheel with him. He gives this account of the accident:

"*A.* 4. I was in the pilot-house, on the opposite side of the wheel from Mr. Looney, to advise and give him assistance, if necessary, in handling the boat. *I think the accident was caused by a light flaw or gust of wind, as we call it on the river, striking the boat on the starboard side, causing her to flank broadside toward the pier. The gust of wind came up suddenly*, as it often does in that country, while or after the wind was dying out, having blown more or less through the day.

"*Q.* 5. Had you any wind that affected the running of the boat, after leaving the bridge at Fort Snelling, until this sudden flaw or gust of wind struck you while passing these piers?

"*A.* We had very little wind; none that would affect the handling of the boat. We had no trouble after getting straightened down the river below the bridge at Fort Snelling, until we met with the accident at the other bridge or piers.

"*Q.* 6. In what way were you entering the draw prior to this gust of wind?

"*A.* 6. As near as I could tell, about the center, between the break of the pier that was under water and the one we struck.

"*Q.* 7. Would there have been, in your opinion, any difficulty in passing through these piers, had it not been for this gust of wind?

"*A.* 7. I think not; *I thought we would miss the piers; I was so certain that we would miss the pier, that I was about to set down in the pilot-house,* when I discovered the boat drifting broadside against the pier.

"*Q.* 8. What was done by you in the pilot-house to counteract the effect of the wind; and could anything more have been done? If so, what?

"*A.* 8. We gave her the wheel to the starboard, to hold her away from the pier; I think nothing more could have been done, as the bow of the barges were then ahead of the upper end of the pier; it was too late to have attempted to have backed out." *Record*, p. 68.

"*Q.* 53. Would the gust of wind that struck you while you were entering the piers affect you in the open river?

"*A.* 53. It would.

"*Q.* 54. Enough to have noticed it?

"*A.* 54. Yes, sir.

"*Q.* 55. Did it careen the boat?

"*A.* 55. It did not; it was not strong enough for that.

"*Q.* 56. What effect would it have had upon you in the open river?

"*A.* 56. It would make her flank or go sideways.

"*Q.* 57. Not enough to have bothered you much, would it?

"*A.* 57. It would n't have done any harm unless we were running near something.

"*Q.* 58. Would it have bothered you running down from Fort Snelling?

"*A.* 58. But very little.

"*Q.* 59. Did the boat drift across the current or quartering with it?

"*A.* 59. The wind blew her more across than any other way.

"*Q.* 61. Do you know how much damage it done the barge?

"*A.* 61. I know it sunk her," etc. *Record*, pp. 72, 73.

CAPT. ENYART was on the hurricane-deck of the Lady Pike, in front of the pilot-house, and he gives this account of the accident.

In answer to question 4, he says:

"There might have been two or three causes; one was, a gust of wind came up just as we were about a length or less from the pier. I look at this as the principal cause. I do n't know anything else that caused it." *Record*, p. 48.

In answer to the 5th question, he says:

"The wind came nearly square across the river—there was a row of piers there—and it struck the larboard barge and sunk her. The wind blew toward St. Paul, and drifted us in that direction.

"*Q.* 6. What was the first notice you had that there was any danger or peril to your barges, from any cause?

"*A.* 6. When the wind struck the boat we were too close to back out. We were within a length or less of the piers.

"*Q.* 7. How did the wind come up as to suddenness, and state whether or not you had had any wind since you left Fort Snelling that affected in any way the running of your boat?

"*A.* 7. We had had several little gusts that day that had bothered us some. We had some wind up at the other bridge that bothered us some, but this looked all plain sailing, and would have been if it had been entirely calm.

The gust that struck us came up suddenly. We had no wind that affected the running of the boat after leaving the other bridge." *Record*, pp. 43, 44.

He further says:

"*Q.* 16. You stated, in answer to question No. 4, that there might have been several causes which caused the boat to strike the pier. Please explain yourself, and state whether or not there was any other cause, except the gust of wind, that you know of.

"*A.* 16. That is the only cause that I know of. I did not intend that should go down. I did not mean that there was any other cause." *Record*, p. 44.

He further says:

"*Q.* 29. State whether, in your opinion, there would have been any accident to this barge except for this sudden gust of wind that struck the boat, as you have stated. How high is your cabin above the deck, and how is your boat?

"*A.* 29. I think there would not. I should think about 21 feet. She is about 155 feet in length." *Record*, p. 45.

On cross-examination, he says:

"*Q.* 88. Was there anything in the sky that would indicate a sudden puff of wind just then?

"*A.* 88. There was not that I noticed.

"*Q.* 89. How hard did the wind blow? Was it a regular gale, or was it a sort of April shower puff?

"*A.* 89. Well, just a little puff of wind. We had several of them that day." *Record*, p. 50.

Further on, he says:

"*Q.* 9. You say, in your cross-examination, that the wind which struck your boat at the time of the accident was just a little puff, or some such word. What do you mean by that?

"*A.* 9. I mean a little squall; not a regular long gale.

"*Q.* 10. You say in passing that the pilot attempted to prevent the striking the pier by putting her wheel to the starboard. What effect would that have?

"*A.* 10. It would draw the boat off from the pier.

"*Q.* 11. Before the wind struck her was she not entering the piers so as to go fairly through them?

"*A.* 11. She was." *Record*, p. 51.

J. PERSINGER, the mate of the steamer, says:

"*Q.* 3. Did you witness the accident; and, if so, what caused it, how did it happen, and could it have been avoided?

"*A.* 3. I saw the accident. A gust of wind came up just as we were entering the piers, and caused it to strike the pier of the bridge. It could not have been avoided.

"*Q.* 4. Which side of the boat did it (the pier) strike, and where were you standing at the time of the accident?

"*A.* 4. It struck the larboard side. I was standing on the starboard side of the boat. The wind struck the starboard side of the boat. I was standing aft. We and the men were taking in the slack of the lines.

"*Q.* 5. Had you had any wind that affected the running of your boat after leaving the fort; had you or not?

"*A.* 5. None that would affect the running of the boat.

"*Q.* 6. About what time in the afternoon did you pass through piers?

"*A.* 6. Between three and four o'clock.

"*Q.* 7. Who were on watch at the time, and were they or not at their posts, and attending to their duty?

"*A.* 7. We were all on watch. The captain was on the hurricane-roof, and I was on deck. We were at our posts, and attending to our duties. I was on the main-deck, which is the lower deck.

"*Q.* 9. Was there or not any mode by which you could have avoided the accident, after the wind struck you?

"*A.* 9. I don't think there was.

"*Q.* 10. Was there any negligence upon the part of any of the officers or crew of the boat so far as you know, that led to the accident; or was it attributable to this wind, so far as you know?

"*A.* 10. There was not any negligence so far as I know; it was attributed to the wind." *Record*, p. 61.

Here we have the two pilots in the pilot-house; the captain on the hurricane-deck, in front; the mate on the forecastle, or main-deck forward, and Capt. Montfort, on the barge Salmon, forward, near where she hit the pier, all swearing to these facts:

1. That there was no wind, appearance or expectation of wind, when they approached the piers.

2. That the wind came up suddenly—a sudden gust—and blew them upon the pier.

3. They entered between the piers fair, and would have gone through safely, if it had not been from this sudden and unexpected gust of wind.

SECOND. *The loss then was clearly caused by an act of God.*

Similar cases have often been decided by the Court, and the rule is well settled in relation thereto.

Amies v. *Stevens*, 1 Strange, 127, 128.
Colt v. *McMechen*, 6 Johns. 165.
Ready v. *Steamboat Highland Mary*, 17 Mo. 464.
The Lady Pike, 2 Bis. C. C. R. 141.
Hays v. *Kennedy*, 41 Penn. St. 383, 385.

Several of these cases are very much in point.

The case of *Amies* v. *Stevens*, 1 Strange, 127, is thus reported:

"The plaintiff puts goods on board the defendant's hoy, who was a common carrier. Coming through bridge, by a sudden gust of wind, the hoy is sunk, and the goods were spoiled. The plaintiff insisted that the defendant

should be liable, it being his carelessness in going through at such a time; and offered some evidence, that if the hoy had been in good order, it would not have sunk with the stroke it received, and from thence inferred the defendant answerable for all accidents, which would not have happened to the goods in case they had been put into a better hoy. But the C. J. held the defendant not answerable, the damage being occasioned by the act of God. For though the defendant ought not to have ventured to shoot the bridge, if the general bent of the weather had been tempestuous; yet this being only a sudden gust of wind, had entirely differed the case: and no carrier is obliged to have a new carriage for every journey; it is sufficient if he provides one which, without any extraordinary accident (such as this was), will probably perform the journey." 1 Strange, 127, 128.

The case of *Colt* v. *McMechen*, 6 Johns. 165, was one in which a carrier was sued for injury to goods being carried upon his sloop, on the North river. He was beating up in a light and variable wind.

"While standing on a tack to the west shore, and when they had approached it as near as was usual and proper, the helm was put down to bring the vessel about. She began to fill, and the vessel had partly changed her tack, *when the wind suddenly ceased blowing*, and the headway under which the vessel then was, carried her on to the bank." 6 Johns. 160, 161.

The Court, among other things, say:

"The case of *Amies* v. *Stevens*, 1 Str. 128, shows that a sudden gust of wind, by which the hoy of the carrier shooting a bridge, was driven against a pier and overset by the violence of the shock, has been adjudged to be the act of God, or *vis divina*. The sudden gust in the case of the hoyman, and the sudden and entire failure of the wind sufficient to enable the vessel to beat, are equally to be considered the acts of God. He caused the gust to blow in the

one case; and in the other, the wind was stayed by him." *Colt et al.* v. *McMechen*, 6 Johns. 165.

In both the above cases the charge against the carrier was like the charge in this case; that is, carelessness in the attempt: and in both the cases, the facts to make it out were much stronger than in this case.

If a party was to desist action because there was a possibility of an injury, he would never do anything. There is the possibility of the loss of a ship every time she crosses the ocean—indeed, there is no very great improbability that she may be lost—yet, if fair nautical judgment is used, and a loss happens by an act of God, or a peril of the sea, it is held to be inevitable, and the carrier is excused.

He must use his judgment. He is not bound to have the highest nautical skill or the best judgment, any more than the best vessel.

Some very sensible remarks are to be found upon this subject in the case of *Hays* v. *Kennedy*, determined in the Supreme Court of Pennsylvania.

It was an action against a carrier for the loss of goods. The Court say:

"There is the intervention of man in a loss by tempest: for he chooses the route that brings the vessel where the tempest rages; he made the mast and sails and sets the sails that break away in the storm, or drive the vessel under; he made the ship that is too weak or too small to live in such a tempest. It is by the intervention of man that vessels bound to and from England keep so far north as to fall in with icebergs, and sometimes be destroyed by them. There is human intervention when a vessel is driven by a storm against a wharf, or pier, or bridge constructed by men. If a storm drives a vessel from her mooring, by dragging her anchor or parting her cable, it is because the

human means of holding her are insufficient. If a death happen by an inevitable accident, in the working of mines or other excavations, or in conducting steam-works, or by the fall of a house or of some fragment of it, there is human intervention, and yet it may very properly be reported as a death *ex visitatione Dei*. It is impossible, therefore, to define inevitable accidents by excluding the element of the intervention of man; for this element itself needs definition. In all the instances we have given, the accident may be legally inevitable, even though there be the intervention of man having some influence in it. No man warrants, or is ever expected to warrant that the route he takes is the very best, or that his crew are perfect, or that his vessel is perfectly secure; he does his duty in all these particulars, if he can bear the test of the ordinary or customary standards. If a man ships his goods on a raft, or flat, or oyster-boat, he does not expect his warranty to make them as secure as they would be in a first-rate East Indiaman or the best Liverpool packet. . . . . Nobody doubts this meaning of perils of the sea, and inevitable accidents, in insurance contracts. Why should it be different in carriers' contracts? We can never administer rights of contracts justly by arbitrarily infusing into them terms which are never intended by the parties, which are not sanctioned by the actual customs of the people, and which are not involved in the very nature of the relation created by the contract." 41 Penn. St. 381, 382.

Speaking of the necessity of foresight and caution, the learned Judge says:

"I do not mean all the endeavors which the wit of man, as it exists, in the actual understanding might suggest; but such as might reasonably be expected from a fair degree of discretion, and an ordinary knowledge of business." 41 Penn St. 384.

To the same effect are the decisions of this Court. Thus in the *Morning Light*, the Court say:

"Different definitions are given of what is called an inevitable accident, on account of the different circumstances attending the collision to which the rule is to be

applied. Such disasters sometimes occur when the respective vessels are each seen by the other. Under those circumstances, it is correct to say that inevitable accident, as applied to such a case, must be understood to mean a collision which occurs when both parties have endeavored by every means in their power, with due care and caution, and a proper display of nautical skill, to prevent the occurrence of the accident. When applied to a collision, occasioned by the darkness of the night, perhaps a more general definition is allowable. 'Inevitable accident,' says Dr. Lushington, in the case of the Europa, 'must be considered as a relative term, and must be construed, not absolutely, but reasonably, with regard to the circumstances of each particular case.' Viewed in that light, inevitable accident may be regarded as an occurrence which the party charged with the collision could not possibly prevent by the exercise of ordinary care, caution, and maritime skill." 2 Wal. 560, 561.

Similar views have often been expressed by this Court.

See specially the opinion of the Court in *Propeller Niagara* v. *Cordes*, 21 How. 33, 34.

The Supreme Court of Missouri, in a case relating to the carriage of property upon the Mississippi, some years ago, adopted a similar course:

"The Circuit Court, in its finding of the facts connected with the loss of the horse, finds only that the boat, while passing in the night a part of the river rendered difficult by snags, and known to be difficult by the officers of the boat, struck a snag, in consequence of which the horse was lost. From these facts, the conclusion of law is pronounced that the boat is liable, on account of the negligence of the officers in passing such a place in the night. In *Collier* v. *Valentine*, 11 Mo. 309, this language is used, in the opinion of the Court, delivered by Judge Scott, when speaking of passing bars and snags in our rivers, and showing the difference between such impediments and the rocks and shoals found in ocean navigation; but it is obvious that this doctrine (that of the liability of a common carrier, on account of the vessel striking against a known rock or shoal) can not apply to the navigation of our in-

land rivers, where a vessel can not avoid a bar or snag, and there is no other way but to pass over it. 'Where carelessness or rashness is imputed, under such circumstances, every case must be determined by its own facts. That a carrier may make himself liable for rashness or negligence in passing such place, by which a loss is occasioned, there is no question; and so it is equally clear that it may be passed under such circumstances as will exonerate him from all responsibility. The course usually pursued by skillful pilots, in passing a bar or snag, or dangerous place in the river, must be the test by which the propriety of the conduct of the carrier is to be ascertained.' It is obvious, that, under the principles here stated, the Circuit Court, in the present case, was not justified in deciding that there was negligence in the management of the boat, merely because a difficult place was passed in the night. It may be that, in some condition of the weather and the moon, the place at which the loss occurred might as safely be passed at night as in the day; and it may be the general practice of pilots, in passing that place, when ascending the river, to pass it as often in the night as in the day. Negligence was not a just inference from the facts found; it certainly was not a conclusion of law from those facts." *Ready* v. *Steamboat Highland Mary*, 17 Mo. 463, 464.

In this case, it is shown that the Lady Pike pursued the usual course in passing the piers; indeed, the only course she could take, as will be specially shown further on.

IV.

THERE WAS NO WANT OF CARE IN THIS CASE.

This is not very material, but it is clearly shown in the record:

1. The barges were in good condition, and the wheat did not suffer on that account. *Captain Montfort's Ev.*, *Ans.* 8, 9, *Record*, p. 53.

They were, in fact, examined by the shipper, and he knew the wheat was to be shipped in them. *Montford's Ev.*, *Ans.* 6, *Record*, p. 53.

2. The boat was well and fully manned, and all the officers were at their several posts attending to their respective duties. *Montfort's Ev.*, *Ans.* 21 *and* 27, *Record*, p. 54; *Persinger's Ev.*, *Ans.* 11, *Record*, p. 67; *Enyart's Ev.*, *Ans.* 13, *Record*, p. 44.

3. The barges were being towed in the usual way for the towing of such boats, and the only way they could be towed. *Montfort's Ev.*, *Ans.* 36, 37, *Record*, p. 55, and *Ans.* 1, *Record*, p. 64; *Persinger's Ev.*, *Ans.* 14, *Record*, p. 62; *Looney's Ev.*, *Ans.* 10, *Record*, p. 78.

LOONEY says:

"*Q.* 9. What is the usual way of taking barges in tow through piers of the kind in question?

"*A.* 9. We always towed them alongside.

"*Q.* 10. Which is the safest and best way to get barges through between piers of that kind, and what other way had you at the time?

"*A.* 10. We had no other way but to tow them through, and this was the safest and best way; and we would have gone through safe but for this squall. Barges of that kind are built for towing altogether;—they are not provided with sweeps, and crews that are acquainted with managing a craft in that way. An ordinary steamboat crew would not be able to manage one, even if it were arranged to be managed in that way." *Record*, p. 78.

GRANT, the pilot, testifies:

"*Q.* 12. Suppose your barges were fitted for being rowed and not for towing, as barges are fitted up for being towed, which means, in your judgment, would have been the safest way of getting them through there, towing, or rowing them through, the river being in the condition it was?

"*A.* 12. It would have been the safest way to tow them through, unless you had an experienced barge pilot and crew, it not being customary to run barges by hand in that part of the river. Steamboats do not have men that know anything about floating or handling a barge with oars." *Record*, pp. 68, 69.

To the same effect is the testimony of Looney. *See Ans.* 10, p. 78, *quoted on* pp. 22, 23, *of this brief.*

CAPTAIN JAMES NEWTON testifies to the same effect, thus:

"*Q.* 5. Suppose the Pike had three barges twenty (20) feet in width each, and suppose these barges were fitted with sweeps for rowing, and loaded with grain, which, in your opinion, would be the safest—to tow them through, or cut them loose and row them through, the river being high?

"*A.* I would rather tow them through all the time. It is much the safest to tow them through, even if we had a rowing crew.

"*Q.* 6. Have you ever passed through the piers at the upper end of St. Paul—the piers in question—and how wide was your float?

"*A.* 6. I have passed through there several times with barges. On one occasion it was about one hundred and twenty-five (125) feet wide." *Record*, p. 88.

This last-named witness had had large experience, as appears on the same page of the record.

4. They were passing through the piers near the center, fair, and would have gone through had it not been for the sudden gust of wind. *Montfort's Ev., Ans.* 15, *Record*, p. 53; *Enyart's Ev., Ans.* 11, *Record*, p. 51; *Grant's Ev., Ans.* 6, *Record*, p. 68; *Looney's Ev., Ans.* 13, *Record*, p. 78.

5. There was, in fact, no negligence by those on the Lady Pike at the time. *Montfort's Ev., Ans.* 36, *Record*, p. 55; *Persinger's Ev., Ans.* 10, *Record*, p. 61; *Grant's Ev., Ans.* 8, *Record*, p. 68.

SECOND. *But this question is not important under the circumstances, as the carelessness, if any there was, was not the immediate cause of the loss, but was a remote cause only.*

The evidence heretofore quoted, pp. 9–16, shows clearly that the accident was wholly caused by a sudden gust of wind, and would not have happened without it.

This brings the case clearly within the rule above stated.

Railroad Co. v. *Reeves*, 10 Wal. 190.
Denny v. *New York C. R. R. Co.*, 13 Gray, 486.
Morrison v. *Davies*, 20 Penn. St. 176.
Barron et al. v. *Eldridge*, 100 Mass. 461.

The only ground of negligence suggested is, that the passage between the piers was so narrow that such a gust of wind would be likely to cause a loss, and that the ap-

pellees were bound to foresee such a possibility. In relation to such a matter, the cases above cited are decisive.

In *Morrison* v. *Davies et al.*, the Court say:

"Now there is nothing in the policy of the law relating to common carriers that calls for any different rule, as to consequential damages to be applied to them. They are answerable for the ordinary and proximate consequences of their negligence, and not for those that are remote and extraordinary; and this liability includes all those consequences which may have arisen from the neglect to make provision for those dangers which ordinary skill and foresight is bound to anticipate. Though they are held to the strictest care, as to the sufficiency of their ship and other vehicles, and the custody of the goods, yet no greater foresight of extraordinary perils is expected of them than of other men, and no greater penalty is visited for its failure. The consequence which ordinary foresight may anticipate from an insufficient ship is, that all the goods may be lost. Their value is, therefore, the proper measure of the damage." 20 Penn. St. 176.

In the case of *Barron* v. *Eldridge*, the Court say:

"The possibility of the destruction by fire, communicated from such a distance, was too remote, according to the usual experience of mankind, to justify a finding solely upon the evidence afforded by its loss, that in reference to property contained in it, the defendants did not exercise due and ordinary care." 100 Mass. 461.

In this case the defendants placed flour in an elevator which was near some wooden sheds, and a wood-burning locomotive engine passed within three to six feet therefrom. Shortly before, the proof showed that there was a light breeze that afternoon in the direction to carry the fire to the elevator, and that there was no watchman there at the time.

It is also a rule well settled in this Court, *the loss being shown to have been immediately caused by an act of God, or*

from an excepted cause, the burden is upon the appellant to show negligence directly and immediately bringing such cause, into operation, and making it, in fact, the REAL *cause of the loss.*

Transportation Co. v. *Downey*, 11 Wal. 134.
Clark v. *Barnwell*, 12 How. 280, 281.
Muddle v. *Stride*, 9 Car. & P. 382.

THIRD. This appeal would not, I think, have been taken except for the case of *The Merrimac*, 14 Wal. 203, 204.

Now, that case is distinguishable from this in several important particulars.

First. There was no necessity of passing between the Gladiator and the wreck; whereas, there was a necessity of going between these piers. The ship aground would soon have been out of the way.

Second. The Court find that it "was a rash act for the steamship with her two brigs, one on her larboard and the other on her port side, to attempt to pass between the Gladiator and the wreck, even if the space between these objects was somewhat wider than the three steamers abreast, which, to say the least of the proposition, is (was) doubtful." 14 Wal. 204.

In that case no new cause of the accident intervened, like a sudden gust of wind, and the injury was caused simply because there was not room for the Merrimac, with her tow, to pass where they did, and there was no necessity for her going there at that time.

On our Western rivers, as is so well stated in the case cited from 17 Missouri, perils like the one in question have to be encountered. They can not be avoided—could not have been avoided in this case. Whereas, in the case of

the Merrimac, there was no necessity or propriety even of putting herself within such peril at the time.

Third. In the case of *The Merrimac* the District and Circuit Courts had found against the Merrimac, and the Supreme Court affirmed the judgment below. Whereas, here the Court is asked to reverse the finding of the District and Circuit Court, which is rarely done in such cases. *See cases cited on p. 6.*

The day was fair, and there had been no wind for an hour before, and was no appearance of wind at the time they approached the piers, and the barges having no means by which they could have been floated down between the piers, and being towed in the usual manner through a place that must be passed, clearly there was no want of that care or foresight in not anticipating and guarding against this gust of wind.

"The wind bloweth where it listeth, and thou hearest the sound thereof, but canst not tell whence it cometh, and whither it goeth."

FOURTH. In the evidence an attempt was made to show some want of care in the speed of the Lady Pike as she approached the piers. Pretty clear proof would be required that all these officers on watch had neglected anything in relation to passing these piers. They knew their boat and how the tow handled, and how best to pass the piers. The precise speed is not shown; but one fact is proven, which shows that she was not running any too fast.

CAPTAIN MONTFORT states that they were going at a moderate speed.

"*Q.* 5. Did you hold up any before you went between the piers, or did you go at your usual speed?

"*A.* 5. We had poor fuel, and was going at a moderate speed, but did not hold up any." *Record*, p. 60.

PERSINGER, the mate, says that she was going at the time about seven miles an hour, which was her usual speed. *Record*, p. 62, *Ans.* 12 and 13.

CAPTAIN ENYART, in answer to a question as to her speed, says:

"I should think about six or seven miles per hour." *Ans.* 18, *Record*, p. 44.

GRANT says:

"I think she was making about seven miles an hour." *Ans.* 19, *Record*, p. 69.

Now, as about seven miles was her ordinary speed down stream with such a tow, she could hardly have been running that fast, as she had poor fuel, which would make her run a little slower.

The witnesses all agree that for a stern-wheel boat, which the Lady Pike was, they would go through with their ordinary speed; though with a side-wheel boat, they would approach them more slowly. See *Newton's Ev.*, *Ans.* 2 *and* 3, *Record*, p. 90, and *Ans.* 1, pp. 89, 90; *Looney's Ev.*, *Ans.* 19, *Record*, p. 79; *Grant's Ev.*, *Ans.* 20, *Record*, p. 69; *Enyart's Ev.*, *Ans.* 19, *Record*, p. 45.

The river was unusually high at the time. *Montfort's Ev.*, *Ans.* 8 (46), *Record*, p. 56.

Three witnesses were examined after the case was appealed to the Circuit Court, and their evidence was before

Judge Drummond on appeal. Two of them, Bigelow and Johnson, were examined without notice to the other party. They speak of running slow in approaching the piers, but they are evidently speaking of side-wheel boats.

Capt. Brock was also examined for the appeal. He had been in the habit of passing them on the Phil. Sheridan, a side-wheeler, and he says that three feet to spare is enough on each side; that if he was passing through on the Sheridan all right, he would go slow; if not in the right shape, he would go ahead fast. *Record*, p. 120.

And on cross-examination he says that if, in passing the bridge-piers, he was headed fair to the draw, and just before he entered it, he should be struck with a gust of wind, with a heavy tow on (the condition of the Lady Pike), then it would be better to have a full head of steam on, to prevent flanking. *Record*, p. 120.

The evidence taken after the appeal to the Circuit Court, and before that Court upon the hearing, when carefully examined, rather strengthens than weakens the case made for the appellees.

FIFTH. It is said that the tow was too wide to pass through the piers.

It appears in this record that it was usual to pass between the piers with much wider tows than the one in question.

Capt. Brock speaks of it, and says that three feet on each side was enough. *Record*, p. 117.

This is one of the libelants' witnesses, taken after the appeal. The tow in question was but ninety-eight feet wide. The barges were twenty feet wide. *Montfort's Ev., Ans.* 23 (61), *Record*, p. 56. The boat was thirty-eight feet

beam and guard—over all. *Montfort's Ev., Ans.* 24 (62), *Record*, p. 56.

Three barges of twenty each, and the boat thirty-eight feet over all, makes the tow ninety-eight feet in width.

The width between the piers, measured on the ice when the river was low, is ascertained to be one hundred and seventeen feet in the clear. *Record*, p. 39. At high water (it was unusually high at the time, *Ans.* 8, p. 56) the width would be at least one hundred and twenty feet, owing to widening of the pier as it descends. This leaves from twenty to twenty-two feet over and above the width of the tow, or ten to eleven feet on each side. Now even the witnesses taken by the libelants, without notice after the hearing in the District Court, Bigelow and Johnson, both swear that ten feet on each side is enough. *Bigelow's Ev., Ans.* 8, *Record*, p. 112; *Johnson's Ev., Ans.* 6, *Record*, p. 113.

And Brock says that three feet on each side will do him, with the Phil. Sheridan. *Brock's Ev.*, at the top of p. 117.

GRIGGS, an experienced pilot, who was acquainted with the Lady Pike and who knew the day, says:

"If I had been piloting the Lady Pike with her tow at that time, I should not have laid up, but come through as she did, provided she was in good running order." *Record*, p. 97.

That the Lady Pike was in such order appears in several places in the record. She steered well and handled easily. *Looney's Ev., Ans.* 5, *Record*, p. 87; *Persinger's Ev., Ans.* 11, *Record*, p. 61; *Montfort's Ev., Ans.* 24, *Record*, p. 54; *Mettmiller's Ev., Ans.* 3, *Record*, p. 65.

And she towed well. This appears in the record in

several places. See *Looney's Ev.*, *Ans.* 5, *Record*, p. 87; *Houghton's Ev.*, *Record*, p. 96.

JAMES HOUGHTON says:

"I have taken three barges through the bridge with a steamer. I have taken three through abreast, side by side; have taken two large barges and a small one. When there was no wind, I should not think it very risky to take three barges through together abreast. I have taken through there a tow of the width of ninety to one hundred feet." *Record*, p. 95.

He says he thinks it prudent to come down through there, on a calm day, with such a tow. *Record*, p. 95.

The Court must bear in mind that this boat was engaged at Reid's Landing to go to Shakopee with these three barges, and have them loaded with wheat, in bulk, for the shipper, and that they could not be towed in any other way than as they were being towed. *Montfort's Ev.* 1, *Record*, p. 64; *Looney's Ev.*, *Ans.* 10, *Record*, p. 78; *Ans.* 80, p. 85.

The barges must go through between these piers, and there was no means of floating them through.

In consideration of the reduced rates of this mode of carriage (the portion which the Pike was connected with must be of a towage character), the shipper was content to take the risks incident to this mode of carriage. He would secure much more thereby than he had to pay the libelants to insure him against these very risks.

The premiums for the insurance paid the libelants were more than paid by the Lady Pike in the reduced freight. And it was therefore fair that the shipper should himself take this risk, as he did.

The libelants have not produced the bill of lading, but

it is shown in the proof that the shipper saw the steamboat and the barges; that he contracted to have the wheat taken in bulk; that he excepted the dangers of the river and fire.

The acts of God the law excepts, even as to common carriers.

The Court will also bear in mind that the Lady Pike is not sued upon the contract, or as a common carrier; nor does it anywhere appear that she was such. This is not, perhaps, of any special importance, as the evidence clearly shows the loss to have been by an act of God; that there was no carelessness on the part of those in charge of the Lady Pike, nor any such want of foresight as should render her liable for this loss.

And we maintain that there is nothing in this record that should authorize this Court to reverse the decrees of the District Court and the Circuit Court, and make the appellees liable to the libelants for this loss.

All of which is respectfully submitted.

T. D. LINCOLN,

Of Counsel for the Appellees.

REPLY TO THE BRIEF

— OF —

MESSRS. CARLISLE & McPHERSON.

On this 2nd day of Nov. 1874, I have seen the above named brief, filed in this case. The foregoing pages were printed before I saw that brief. In most respects they are a full answer to the brief of the learned counsel, but I add what follows:

I.

THE QUESTION ONE OF FACT, AND THE DECREE FOUNDED THEREON, NOT TO BE REVERSED EXCEPT UPON VERY FULL AND CLEAR EVIDENCE.

The learned counsel treat the case as one of fact merely. As they regard it, it is one of conflicting evidence. That being the case, and the District and Circuit Courts having both decided against the appellants, it must be a very strong and clear case that will authorize this court to interfere and reverse the decree below. The rule upon this subject and the authorities sustaining it are found on pages 5 and 6 of the foregoing brief.

This court cannot, under the circumstances of this case, enter into conflicting evidence and reverse the decisions of the courts below, whose peculiar duties it was carefully to examine into those facts, and to be acquainted with those customs and usages that

apply to and affect the boats and navigation in question; nevertheless, this is the effort of the learned counsel, and in so doing they make sundry points to which I desire to make some reply.

II.

THE BOAT WAS A GOOD BOAT, WELL FITTED FOR THE TRADE WELL AND FULLY MANNED AND EQUIPPED.

The first error assumed or point made, is, that the boat was not fit for the voyage.

No witness intimates that there was any defect in boat or want of power.

FIRST. As to the boat the evidence most clearly shows to the contrary.

See *Capt. Monfort's Ev.* p. 60, Ans. 8.
C. W. Fisher's Ev. p. 66, Ans. 4, 5 and 6.
Looney's Ev. p. 79, Ans. 22.
Newton's Ev. p. 88, Ans. 4.
Houghton's Ev. p. 96.
Harris' Ev. p. 104, Ans. 6.
Grigg's Ev. p. 97.
Bell's Ev. p. 99.

Thus, LOONEY, who was at the wheel at the time says:

"She would compare well with any boat that run as far up as Fort Snelling in any respect. She is larger and better than many of them that go as far as St. Paul. They all tow barges. *She is larger and more powerful than the boats that ordinarily run up the Minnesota River. She was the best stern wheel boat that I have known on that river for several years!* Ans. 22, p. 79.

Shakopee is on that river.

CAPT. NEWTON, who had much experience in this trade says:

"She has better power than the general run of boats that run up there. For towing three or four loaded barges she would be a boat of good power. Ans. 4, p. 88.

BELL, says:

"I consider her a very good tow boat. I consider her better than the generality of the Minnesota River boats. I should think she was competent to tow three loaded barges down stream. I have seen a steamer with three barges abreast go through this bridge. There is no doubt there is room enough." Bell's Ev. p. 99.

JAMES HOUGHTON, says:

"From what I have seen her towing around, she appeared to tow well * * I have taken three through abreast, side by side, have taken two large barges and one small one." p. 95.

And GEORGE HAUGHTON says, he has taken four through going up and three going down. p. 98.

See the references above for further evidence to the same effect.

She was a good stern wheel boat, in good order, and most of the towing upon the Western Waters is done by such boats.

LOONEY, says:

"They tow with stern wheel boats. They are preferred to the side wheel boats for towing—they are generally now adopted on the rivers." Ans. 23, p. 79.

SECOND.—*The Lady Pike was also in good condition, well manned and equipped.* This is clearly shown notwithstanding the intimation to the contrary.

Capt. Enyart's Ev. p. 44, Ans. 13 and 14.
Capt. Monfort's Ev. p. 54, Ans. 22, 23 and 24.
C. W. Fisher's Ev. p. 66, Ans. 2.
Persinger's Ev. p. 61, Ans. 11.

THIRD. *And her pilots were competent and skillful,* and had had much experience in the trade, this is clearly shown.

Newton's Ev. p. 88, Ans. 9.
Harris' Ev. p. 104, Ans. 4.
P. S. Davidson's Ev. p. 42, Ans. 6.
W. F. Davidson's Ev. p. 41, Ans. 6.
Snow's Ev. p. 24.

Both of the pilots were at the wheel at the time.

Enyart's Ev. p. 44, Ans. 12.
Grant's Ev. p. 68, Ans. 3 and 4.

And LOONEY had been piloting there from 1856. *See his evidence, p.* 77, *Ans.* 1.

And GRANT was well acquainted with the navigation there. *Looney's Ev. p.* 87, *Ans,* 4.

FOURTH. *The Appellants cannot object to the boat.*

It was the Lady Pike that the libellants hired. He saw her before he made the contract, knew she was stern wheel, and knew her general character. *It was this identical boat with these identical barges* that he contracted should carry his wheat, to be loaded in the latter in bulk; and unless there was some inherent defect or weakness in her or she was not in repair, no complaint of this kind could be made.

The respondents were not bound to have a larger or more powerful boat, or a boat of a different class, nor a new boat.

The appellants saw the boat and barges and contracted that *she* should go to Chackopee with the barges in question and take the the wheat, in bulk to be loaded therein by the Appellants, in tow, to La Crosse. *See Capt. Monfort's Ev.* pp. 52–53.

Surely the apellants could not complain, if the boat was not what the evidence shows her to have been, the best boat that run up the Minnesota River.

FIFTH But it is contended that the boat was not well manned—that the pilots were not competent. *Now the proof clearly shows* the contrary as will appear by an examination of the record at the places above referred to on page 4.

SIXTH. But it is said that neither of the pilots knew the width of the opening, nor the width of the tow, and that they over estimated the one and under estimated the other. And all this is based upon certain erroneous statements of the evidence made by the learned Counsel.

He assumes that the tow was 105 feet wide, when in fact, it could not have been more than [redacted] 98 feet; this is shown by Capt. Monfort who knew all about it. *See answers* 23 and 24; p. 56.

The learned Counsel also assumes that the passage was but 117 feet wide, when in fact at that time, it was 120.

NEWTON once took a tow of 125 feet through the same passage. *Record* p. 88 ans. 6 and 7.

The measurement upon the ice when the water was very low, and when the distance was taken at the bottom of the piers it is said was 117 feet. *Record* p. 39.

I think this is an error but the River at the time was high which would make the passage between the piers at least 120 feet. Taking this measurement as accurate this would

leave a clear space of eleven feet on each side of the tow. None of the witnesses examined say that this space is not sufficient.

BROCK, a witness examined by the appellants after the decree in the District Court says that three feet space on each side is enough for him with the Phil Sheridan. *Record* p. 117.

The testimony of V. A. BIGELOW, taken by appellants after the decree in the District Court without notice or cross-examination, says he would want 10 feet on each side. *Ans.* 8 p. 112,

And JAMES B. JOHNSON, examined by the appellant at the same time and in the same way, says the same. *Ans.* 6 p. 113.

ALEX. GRIGGS, an experienced pilot, acquainted with the Lady Pike, says he would have gone through with her. p. 97.

ROBERT S. HARRIS, says that it would have been prudent to take the Lady Pike through at the time. *Record* p. 104, Ans. 6.

One of the witnesses says the barges were from 18 to 19 feet wide which would make the tow not more than 95 feet wide.

SPENCER one of the libellants witnesses say that in bringing through 2 to 3 barges, he would desire 10 feet on each side. *Record* p. 21.

SNOW, another of the libellants witnesses says 10 feet on each side is enough, in an ordinary stage of water.

He says that:

"Ten feet on each side is ample precaution so far as space goes, in an ordinary case." *Record* p 27.

The testimony of James Houghton, George Houghton, Edwin Bell and R. S. Harris, is to the same point.

But the learned Counsel thinks these pilots are incompetent, because they do not give the width of the draw and of the tow with accuracy. They do not profess to speak with accuracy

and from measurement and if such a test was applied I fear no one would be found competent—for nothing is so indefinite as distances, thus stated.

Because, the pilot LOONEY says that he thinks he had 30 feet on each side of it, it is said that he is not a competent pilot!

Now, it is of very little importance that they do not give the exact width of the passage. The piers were in sight, they could not mistake them. They could easily, see that the draw passage was considerably wider than their tow—there was no mystery or peculiar skill required to pass through between the piers and the difficulty or loss clearly arose *from a sudden gust of wind, as the evidence most conclusively shows.*

SEVENTH. It is said that it is doubtful whether either pilot or Captain had ever passed down between the piers before. The record shows the contrary. LOONEY had had much experience in that part of the river. *Record* p. 77, *Ans.* 1. *Record* p. 85, *Ans.* 1. And GRANT who was standing by the side of LOONEY at the pilot wheel had also had much experience on the river there. *Looney's Ev.* p. 87. Ans. *Grant's Ev.* p. 67, Ans. 1.

And further—there was nothing peculiar as to that part of the river or as to that bridge; the bridge was within a mile and a half of St. Pauls, and in sight; the draw is over the channel where boats were accustomed to pass down. It was on this draw passage that the accident happened. The bridge was in the course of construction and was so far completed that the piers were in sight, except the turn-table piers which the high water had covered, but the place of which was still visible *Grant's Ev.* p. 70, *Ans*, 6 and 7.

All that was wanted, was a pilot who knew how to handle the boat. At that time the passing of the bridge was a new matter and not a matter of knowledge and skill acquired by long practice. No one had passed it many times. The piers were built

in 1865, and there is no regular trade past that point. *Looney's Ev. Ans.* 34, p. 82.

And then the manner of passing it would depend upon the character of the boat, and upon the day of passing it, etc., of all of which the pilot at the wheel is of course the judge.

EIGHTH. The learned counsel think it shows great ignorance in the Captain, that he could not tell the point of compass from which the wind came. If on the sea or a straight river, that might seem singular, but upon a river that is continually changing its course it is not so. Pilots upon our western rivers do not, as this position of counsel would seem to indicate, steer by the compass; they pay very little regard to the points of the compass. They run by marks on the shore and not by the compass. *Looney, Ev.* p. 86, *Ans.* 3. This supposed ignorance is, therefore, no ignorance at all.

NINTH. Passing over the evidence of Looney, Grant, Enyart, and Davidsons, they quote very largely on page 9 from witness Snow. Snow had been in the habit of running upon the KEOKUK, a side wheel boat. Now, the two classes of boats are run in a very different way at such a place, *Grant's Ev.* p. 68, *Ans.* 10.

A side wheeler has an engine at each wheel, and one may be stopped or backed while the other is going ahead, and both may be backed at once; and such a boat has much greater power of backing away from an obstruction than a stern wheel boat. The one may back out of or away from an obstruction when the other cannot. The side wheel boat may approach such a place slowly, for it has not only the rudder but the power of the wheel to keep it in the proper position. Whereas the stern wheel boat must have on headway or she is liable to flank *Newton's Ev.* pp. 89, 90, *Ans.* 1.

So that in the passing between the piers at this bridge the two boats would be differently handled and managed. The side wheel boat would go slow, or run under a slow bell, for the reason that she might want to back; and she also has the use of the wheel in keeping in course. *James Newton's Ev.* pp. 89, 90, *Ans.* 1.

Whereas the stern wheel boat would keep on her ordinary speed in order to kee, her steerage, and for the reason that it would be impossible to back her away from the peirs, when approaching near them. *Grant's Ev. Re. Ans.* 1, p. 73.

So that though it is usual to go slow, or under a slow bell with the side wheel boat, *Newton's Ans.* 2. p. 89 and 90, *Ans.* 1. it is the usual course to keep on in the ordinary course with a stern wheeler:

Capt. Enyart, Ans. 19, p. 45.
Grant, Ans. 20, 21, p. 69.
Looney, Ans. 19, p. 79.
Newton Ans. 2 and 4, p. 90.

SNOW and BROCK, being upon side wheel boats speak of the proper way of handling them under such circumstances. It would not answer at all for a stern wheel boat at such a place, as the evidence in this case every where shows.

TENTH. A long quotation from Snow's evidence, is made, to show that the current runs between the piers diagonally. It is hardly to be supposed that the draw passage would thus be constructed, and the decided weight of the evidence is against this position.

Looney's Ev. p. 82. Ans. 23.
Grant's Ev. p. 71. Ans. 26.
Davidson's Ev. p. 41. Ans. 6.

Snow is evidently mistaken, for the evidence shows that the current passes down paralel with the piers or as nearly so as is possible.

III.

THERE WAS NO WANT OF CARE.

This point has been somewhat considered on pages 22 to 24 on the foregoing brief.

FIRST. But it is claimed, that there was want of care in passing between peirs 3 and 4.

Now, in the *first* place; this was the draw passage, the place of the channel, and the place intended to be run.

James Newton, *Ans.* 7, p. 88.

And in the *second* place, it was the place usually run.

James Newton Ans. 7. p. 88.
Alex. Griggs, p. 97.
Chas. Spencer, p. 21.

I think the learned Counsel are mistaken in their statements on page 11 of their brief as to the distance between peirs No. 4 and No. 5. I find no evidence in the record sustaining this statement. In fact the record shows that Houghton is mistaken as to his distances, &c.

SECOND. It is next claimed that there was want of care at the time of the accident, in not running over the turn-table pier. This is the III division of the brief of the learned Counsel.

And the Court will find this point based upon the indefinite statements of some of the witnesses as to the highth of some of the piers above water. These statements do not profess to be made from any measurements and were but the opinion or guesses of the witnesses made long afterwards, the witnesses, not having measured this hight and speaking only from the casual view of the piers as they passed them, and from their remembrance of it long afterwards. Surely nothing whatsoever can be predicated upon such evidence.

But the facts and evidence taken together show that there could not have been so much water over the turn-table pier.

GRANT is asked if there was not as much as four or five feet over the turn-table pier at the time and he says:

"I should think it not so far under, from the looks of it." *Ans.* 8, p. 70. He speaks of "the break" of the water over the pier, which indicates its depth under water. p. 70.

LOONEY says:

"There was a large break or boil over it; its exact location was visible." *Ans.* 38, p. 83.

No pilot would think of placing his tow over this break. The tow drew four feet, and it clearly would not have been prudent to run it over this break. *Enyart Ev.* p. 44 *Ans.* 11.

He could not tell whether anything had lodged upon it, or or whether it was entirely safe to pass over it.

THIRD. It is assumed on page 14 of the brief that the tow

was run or attempted to be, within six feet of pier No. 4. This is mere assumption clearly disproved by the record. The tow was but 98 feet wide, *Monfort's Ev.* p. 56, *Ans.* 23 and 24: and was in the centre of the passage.

Looney's Ev. pp. 72, Ans. 42.
Grant's Ev. p. 68, Ans. 6.
Monfort's Ev. p. 53, Ans. 15.

And the passage was at least 120 feet. It has been shown to be 117 feet at low water on the ice and was wider at high water, the piers being narrower as they rise. *See p. above.*

So that instead of six feet, there was eleven feet on each side.

IV.

THE LADY PIKE HAD THE PROPER SPEED FOR A SAFE PASSAGE.

In the IV subdivision of the Appellant's brief, they say that the boat was endeavoring to pass at full speed.

FIRST. There is no evidence to that effect; and the evidence is conclusive to the contrary. The Lady Pike was running about her ordinary speed, though a little slow, for her fuel was not very good. *Record* p. 60 Ans. 5.

See also:

Capt Enyart's Ev. p. 44, Ans. 18,
Capt. Monfort's Ev. p. 54, Ans. 20.
Persinger, Ev. p. 62, Ans. 12 and 13.

Grant's, Ev. p. 69, Ans. 19.
Looney's Ev. p. 79, Ans. 18.

And that rate of speed was the best and safest for the Lady Pike, she being a stern wheeler. This the record fully shows.

Enyart, Ev. p. 45, Ans. 19.
Monfort's Ev. p. 54, Ans. 21.
Grant's Ev. p. 69, Ans. 21.
Looney's Ev. p. 79, Ans. 79.
Newton's Ev. p. 88, Ans. 5, p. 90, Ans. 1.
Harris' Ev. p. 103 Ans. 2, p. 104 Ans. 6.
W. F. Davidson's, p. 41, Ans. 2 and 3.

And all these witnesses at or immedately following the above pages and answers, say that the speed of the Lady Pike, was from six to seven miles an hour, about seven miles.

SECOND. An effort is made to show that the Lady Pike should have entered the draw passage under a slow bell and running slowly.

And the learned counsel bring to their aid witnesses who run on side wheel boats, and who speak of passing by such boats.

They are Spencer, who ran on the KEOKUK, Brock, who ran the PHIL SHERIDAN, Lauderdate, who ran on the G. H. WILSON, a powerful tow boat, Johnson, who ran the MILWAUKEE, all side wheel boats. The testimony of Johnson and Snow is also referred to in this connection, but it does not appear what boats they were running upon, but it is evident that they are referring to side wheelers.

NEWTON, speaking of the KEOKUK, of which boat SPENCER

was pilot, and of the different way of running such a boat says:

She was a side wheel boat. One reason is that with the power the KEOKUK had she can come down there and run slow, and we have the wheels to bring her into position, besides the rudder: and whereas *with a stern wheel boat in coming in you have got to come in with speed, to give her steerage way*: if you don't, if you undertake to back her, or to run slow, she is likely to swing round, and double right round one pier or the other. You have nothing but the rudder to manage her with, and unless you have got headway, you have got no command of her. With side wheel boat you could float through, and rub along by one of the piers, you can back her and hold her in position with one of the wheels." *pp.* 89 *and* 90, *Ans.* 1.

Further on speaking of a stern wheeler, he says:

"I should come in with speed enough to give her steerage, and would endeavor to get my fleet as near the centre as I could. I would approach it straight from above and pass through it straight *with the ordinary speed of the boat.*" p. 90, Ans. 3.

This is the course persued by the Lady Pike. This witness says that the KEOKUK was 55 feet wide (p. 90 Ans. 5) which is 17 feet wider than the Lady Pike (p. 56, Ans. 24) and this shows why she could not tow through the draw passage three barges as prudently as could the Lady Pike. Her tow would be 115 feet wide, whereas the Lady Pike's would be but 98 feet wide.

The learned Counsel says that their researches have failed to find a single witness who has said it would be safe to run through this passage at ordinary speed with a tow as wide as 100 feet.

Now, there are at least nine witnesses who state substantially that. They are Capt. Enyart, Capt. Monfort, Pilots, Looney and Grant, the Mate Persinger, Newton, Griggs, Bell and Harris.

They are not asked this identical question, but it is evident from their whole testimony that they so regard it. *See* p. 61, Ans. 10, and p. 74, Ans. 5. Neither was NEWTON, asked this very question, but it is evident he thinks so. *Record* p. 88, Ans. 4, 5, 6, 7 and 8. ALEX. GRIGGS, was not asked the question, and therefore his mind was not drawn to a question so framed, but he says:

"I think the Lady Pike had two barges besides the one which was injured; cannot state positively. If I had been piloting the Lady Pike with her tow at that time I should not have laid up, but come through as she did, provided she was in good running order." *Record*, p. 97.

Grigg was at the St. Paul landing that day and knew character of the weather, and he is an old pilot.

EDWIN BELL, an experienced pilot, says:

"I have seen the steamer Lady Pike, whose barge met with an accident at this bridge; it was in 1866, I think, the accident was. I consider her a very good tow boat, I consider her better than the generality of the Minnesota River boats. I should think she was competent to tow three loaded barges down stream *I have seen a steamer with three loaded barges go through this bridge, there is no doubt there is room enough*, but I never had occasion to take three through abreast myself. *Record p.* 99.

HARRIS, an experienced captain, says:

"In approaching with a stern wheel boat, I should do so with an ordinary head of steam to handle her with. I wouldn't approach that draw under a slow bell, because you can't handle her well unless she is under some headway, and it would be dangerous to back just as you are about to enter, or are partly in, because you would be likely to throw her round on the piers

if under a slow bell or otherwise. In backing a stern wheel boat there is no telling which way she will go, and this is particularly so if she has barges in tow." *Record p.* 103.

He is asked:

"Sixth, int. What do you say as to the prudence or imprudence of passing down through the draw to the left of the peir in the day time with the steamer Lady Pike, with three barges in tow the whole fleet measuring from 92 to 95 feet feet across when there is no wind prevailing to effect the handling of the boat?"

Ans. I should consider it prudent to try to go through. It is not customary to drop barges though, for they are not provided with oars or other means of being handled. They are made for towing. *I knew the Lady Pike and her barges and the power they had.*" *Record* p. 104. *quest. and ans.* 6.

Harris was an experienced and distinguished captain and he knew the boat and barges and evidently means to say that it was prudent to pass down through the draw passage.

The fact is that this evidence is conclusive, that the Lady Pike was being navigated at the proper speed.

She was not running fast, as her ordinary speed under such circumstances was slow, but 6 or 7 miles an hour.

FIFTH. But it is said that this speed was imprudent because the country was subject at that season to gusts of wind.

Now there had been some wind during the fore part of the day, but the wind had gone down and they had none after leaving Fort Snelling. The sky was clear and there was nothing indicating this very sudden squall that came up and struck them as they were about to enter the draw.

These witnesses simply say what is true of the North River and of the Northern Mississippi, that in the Spring and Fall

the wind will sometimes come up in flaws in that way, but did any one ever suppose that that fact made such sudden squalls, that could not be foreseen, except in the abstract, any the less acts of God? And did any one ever suppose that the ordinary and efficient modes of navigation should be departed from because such a thing was possible.

No vessel crosses the ocean but with the expectation that she may encounter storms. And sudden storms may overtake the river steamer. They are not, however, the ordinary events, and the parties insure against them, and pay an underwriter for insurance, and for bearing such losses, [redacted]. That is the legitimate loss for an underwriter to bear.

See the cases cited on page 16 of the foregoing brief:

The learned Counsel has cited sundry authorities from the 18 How, the 9th and 14 Wall. as to the speed of the vessels, but they apply to a very different set of circumstances. and can have no bearing upon this case.

V.

THE LOSS WAS CAUSED BY A VERY SUDDEN AND UNEXPECTED SQUALL THAT BLEW THE BOAT AGAINST THE PIER.

The learned Counsel in the V subdivision of their brief, deny this position and they quote certain expressions found in the record, that do not give the full force of the evidence of the witnesses using them; and they assert that it is physically impossible that the wind caused the disaster.

Now there are five witnesses who were present at the time and knew the facts and they swear that it did, and there is not a partical of evidence to the contrary: and not the slightest physical impossibility or even improbability in it.

This sudden squall struck the boat just before she entered the draw or as she was about to enter it and at a time when it was too late to back out or round out, and as she went on she was drifted against the pier by the wind. It is not claimed that she was blown directly and broadside against the pier, but that the wind as she progressed down through the draw drifted her against the pier. And any one acquainted with a Western steamer will see that what these witnesses swear to, is not only not impossible, but highly probable under the circumstances shown in proof. The learned Counsel makes a most ingeneous use of certain expressions of these witnesses taken apart from the connecting testimony, and then say that what they swear to is physically impossible. Now this is hardly fair to these witnesses.

They were at the place; they know of what they speak. It was not a thing requiring any scientific or extraordinary knowledge, and they all swear that it was this sudden squall that caused the accident. When we are considering the testimony of a witness we must look at his whole evidence, and at his position, and sometimes, indeed often, in this class of cases, to his peculiar use of language.

What a pilot who has been in very severe continued storms on the Mississippi River, would call a sudden dash of wind—a sudden gust of wind, the learned counsel, if present, might call a severe squall, or a very strong wind. A passenger on a steamship comes on deck, he finds the vessel pitching and rolling and he thinks and says that there is a severe storm, but the captain and seamen will tell him it is only a pleasant breeze. Precisely so with these western pilots, who have no very extensive vocab-

ulary. Take some of these quotations of the learned counsel, found on page 19 of their brief, for instance that of Captain Enyart's "just a little puff of wind; we had several that day."

This is answer 89, p. 50. This quotation gives no fair view of what was in the witnesses' mind, and we must look at the question put and to other parts of his testimony.

He is asked:

"Question 89. How hard did the wind blow—was it a regular gale, or was it a sort of April shower puff.

Now, here is presented to the mind of the witness a regular gale of wind, as compared with one of those sharp, short, quick April blasts, followed by a shower. The idea presented is that of a continued or long gale.

The witness answers: "Well, just a little puff."

Now, turn to question and answer 9, and see how little this last expression "just a little puff" taken by itself, expresses his real meaning.

"Question 9. You say in your cross-examination that the wind which struck your boat at the time of the accident, was just a little puff, or some such word. What do you mean by that?

Ans. 9. I mean *a little squall, not a regular long gale.*" *Record p.* 51.

This shows that the expression "just a little puff" quoted, when taken by itself, gives no fair idea of the witnesses' meaning, but that he used it as against a long gale.

And what is thus called by Enyart a little squall as com-

pared with "a regular long gale," Monfort speaks of as "a sudden squall, quite sudden and not severely hard." The quotation from Grant's evidence, is, "A light flaw or gust of wind."

Now Grant says more than this. He says;

"I think the accident was caused by a light flaw or gust of wind, as we call it on the river striking the boat on the starboard side, causing her to flank broad-side towards the pier. the gust of wind came suddenly," etc.

It is evident that the witness has in his mind some of the hard gales or storms, which they have on the river with which he is comparing this, sudden squall or short gale.

And take the quotations from Looney's evidence. "A smart squall;" "Very common in that country;" "A mere dash of wind;" "Over in less than a minute."

What Looney says is:

"This was *quite* a smart squall and a very common on the upper rivers." p. 77, ans. 2.

The word "quite," is left off by Counsel by inadvertance, or for convenience. It is a significant word in reference to the matter in hand! Just preceeding this quotation the witness says:

"I think the accident was caused by a sudden gust *or blast* of wind that struck the boat just as we entered the piers. This wind struck the boat just as we were entering the piers, and drifted us over against them. We were both positive we would go through without any trouble. I refer to Mr. Grant who was in the pilot house. at the time and standing at the wheel with me. This was *quite* a smart squall, and are very common in the upper rivers." *Record* p. 77 Ans. 2.

Now, see how little the meaning of this witness would be gathered from the short quotations of words disconnected from those immediately joining them found in the brief of the learned Counsel. The word "blast" of wind used in connection with "sudden gust" is significant to show what he meant by it.

Take the other quotation "a mere dash of wind," and see how little that expresses the real meaning of the witness. He is asked:

"*Q.* 63. How long did the gale last?"

Here it is called a gale and length of time is inquired for.

"*A.* I could not tell; a very short time.
Q. 64. Was it over before the barge was tied up?
A. Oh yes; a long time.
Q. 65. Did the gust last more than a minute?
A. I should'nt think it did hardly so long; it was over very quick I knew; it was a mere dash of wind," (p. 84.) that is it was not a long gale.

These expressions were used as contradistinguished to a regular long, severe gale of wind. It is evident from the language used, and the manner of its use, that the witness means to say that it was a quick, short, dashing gale, over in less than a minute.

I have in the foregoing brief quoted all, I think, which the witnesses say upon this point, from pages 9 to 16, and there is no contradicting or counterrailing evidence. It satisfied the District Court Judge, and the Circuit Court Judge, Drummond, and it is to my mind conclusive.

This is a decisive point in the case. It shows what was the real proximate cause of the loss and makes the other questions of fact immaterial.

The evidence brings the case within the rule laid down by this Court in *Rail Road Company* v. *Reese*, 10 Wall. 191, and the *Transportation Co.* v. *Donney*, 11 Wall. 134, and the other cases cited upon pages 16 to 21 and 25 to 26 of the foregoing brief.

See also to the same effect, *Daniels* v. *Ballantine*, 23 Ohio St. 540 and 541. It is because this point if made out in proof, is decisive of the case that the learned counsel declare it to be physically impossible. The burden to show want of care is on the appellants, and he has no proof whatsoever. The case is clear that without this sudden and unexpected squall, the boats would have gone through safely, and the loss must therefore be attributed to the act of God, and fall upon the underwriters, the appellants.

I shall not here repeat the evidence bringing the case within these authorities. It is collected together in the foregoing pages 9 to 16, and the authorities are cited and quoted from pp. 16 to 21, and 24 to 26, to which I refer the Court.

At the close of their brief the learned Cousel endeavor to bring certain mathemical problems to bear upon this question. The trouble with all such caculations is that they have no certain definite bases to rest upon. The calculation and ~~data~~ rule are not admitted to be correct, but if the rule applied were so, of what use would it be without more certain data? The trouble in all such cases, is that the language of pilots and river men, often does not communicate ~~definitely~~ precisely what is in their minds. We have seen this in reference to the wind. So to a pilot says the wind struck her as he was about entering into the draw; that does not necessarily mean that his bow was in fact as low down as the passage between the pier, so that you can safely calculate that it took but five seconds to go through.

It means that he is approaching the draw and so near that he cannot turn out of the way or back away, and must go on.

common parlance among pilots she is said to be about entering the piers. When persons speak of things about to take place they do not think of a few seconds, the boat being in progress.

Now, the learned counsel in their calculation assume many facts that are not definitely shown, and others which are disproved.

FIRST. He assumes that the vessel made twenty revolutions to the minute. She did not make ten—she had poor fuel and was running rather slow for her ordinary speed. *Monfort's Ev.* p.60, Ans. 5.

SECOND. He assumes that the weight of the steamer and barges was 600 tons. There is nothing upon which to found this assumption and it is a very great exageration.

THIRD. He assumes that the vessel was run 10 miles an hour, when the proof shows that it was only 6 or 7 miles an hour, that it was slow ordinary speed, which did not exceed 7 miles an hour.

CAPT. ENYART says she was running about six or seven miles an hour. *Ans.* 18, *p.* 44.

CAPT. ENYART, says:

"When the wind struck the boat we were too close to back out. We were within a length or less of the piers." *Record, p.* 43, *Ans.* 6.

This witness was on the hurricane deck in front of the pilot house, and is more likely to fix the time accurately than any one else, as he was on the lookout generally, and not engaged in piloting the boat.

Looney says:

"When the wind struck us it was too late to back out. It struck us about the time we were entering the piers." *Record* p. 78, Ans. 3.

The mate says; "we were about entering the piers when the wind struck us." *Record* p. 63 Ans. 9. The position of the boat for entering the passage must be taken some distance above the bridge, and when that position is taken and the boat has approched so near that she cannot back out, in common parlance among pilots she is said to be about entering the piers. When persons speak of things about to take place they do not think of a few seconds, the boat being in progress.

Now, the learned counsel in their calculation assume many facts that are not definitely shown, and others which are disproved.

FIRST. He assumes that the vessel made twenty revolutions to the minute. She did not make ten—she had poor fuel and was running rather slow for her ordinary speed. *Monfort's Ev.* p.60, Ans. 5.

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CAPT. ENYART says she was running about six or seven miles an hour. *Ans.* 18, *p.* 44.

CAPT. MONFORT says, "about seven miles an hour." *Ans.* 20 *p.* 54.

GRANT says, "about seven miles an hour." *Ans.* 19, *p.* 69.

LOONEY says, "about seven miles an hour, her usual speed." *Ans.* 18, *p.* 79.

CAPT. MONFORT says: We had poor fuel and was going at a moderate speed, but did not hold up any." *Ans.* 5, *p.* 60.

There is, therefore, no ground upon which to assume this speed of ten miles an hour. It may not have been more than six. The learned counsel's calculations all proceed upon the basis of five seconds of time for the boat to approach and pass through the draw.

Where do they learn that five seconds was the time? It must proceed in part upon the idea that the boat was running ten miles an hour, and upon the further assumption that the bow of the barge was even with the piers when the wind struck the boat. The speed, is shown to be between six and seven. The proof does not definitely fix the distance run as sixty feet only. The piers were all about 30 feet long *Record p.* and the the turu table-pier must have been at least 250 feet long. Nor does the proof show what amount of surface was exposed to the wind. The Pike was light and high. *Record* p. Ans.

There is therefore nothing in the case so definite and well defined that will enable us to apply the rules of mathematics to it. Indeed all this is the merest speculation upon uncertainties and is only made plausible by assuming things not proved and not true.

All of which is respectfully submitted.

T. D. LINCOLN,

Of Counsel for Appellees.

The boat was running at her full speed, ten miles an hour, including the speed of the current.

Davidson for defence, p. 41.

Q. 3. What is the usual speed of the class of boats to which the Pike belongs?

A. I could not give a correct answer. I should judge she was about a seven mile boat. Towing would reduce that speed. * * * She would be a seven mile boat going up stream; going down it would be increased about two miles.

Eugard for defence, p. 44.

Q. 18. About what speed were you making, according to your best judgment, when you struck the piers?

A. I should think six or seven miles an hour.

Page 46.

Q. 16. What is her ordinary speed, fairly loaded, against a two-mile current?

A. Seven miles an hour and over.

Q. 17. In the same current, with it, what would be the speed?

A. I suppose ten miles an hour; it depends on the depth of water.

Pages 50, 51.

Q. 98. How fast could she take those three barges down stream in a good river?

A. About ten miles an hour.

Q. 99. How fast could she have taken them in Lake Pepin?

A. Well, six or seven miles an hour.

Q. 100. Do you mean with crowding, or at an ordinary gait?

A. I mean when it is calm. I mean at ordinary speed; to make ten miles in the river we would have to have a good current.

Q. 91. Was the Mississippi river high?

A. Tolerably high.

Monfort, for defence, p. 44.

Q. 20. About what speed were you making at the time? * *

A. About seven miles an hour; that was the ordinary speed at that stage of the river with that load.

Page 59.

Q. 66. How much speed could you get out of these engines in Lake Pepin with an ordinary load, without crowding them, with three loaded barges and vessel light?

A. I should think about six miles an hour in Lake Pepin?

Q. 69. How fast could she go with the current as the water was that day?

A. Ten miles an hour with those three barges. She could tow them down stream easily at that stage of the river?

Q. 70. Without crowding?

A. Yes, sir.

Page 62.

Q. 12. At what speed was she running when she entered the piers?

A. About seven miles an hour.

Q. 13. Was that her ordinary speed with such a cargo? I mean usual speed.

A. It was her usual speed.

Fisher, for defence, p. 62.

Q. 1. At what rate would you estimate her speed up stream and down?

A. Up stream seven miles, and down stream about twelve, without a tow.

Q. 2. How much difference would a tow of three barges of 20,000 bushels make?

A. About two miles.

Grant, for defence, p. 69.

Q. 19. About what was the speed of your boat while entering the pier?

A. I think she was making about seven miles an hour.

Looney, for defence, p. 79.

Q. 18. How was your boat running when you undertook to pass those piers where the accident happened?

A. About seven miles an hour, her usual speed.

Page 81.

Q. 11. Was the boat making anything near her usual speed before the time of the collision?

A. She was making her ordinary speed.

Q. 12. How much more speed could have been got out of her by effort?

A. I do not think any at the time we were entering the piers.

Q. 13. How much speed could she make up stream with the empty barges when she took them up?

A. I think about five miles an hour.

Q. 14. Then the seven miles an hour you refer to was the speed put into her by the steam without respect to the current. Am I right?

A. The current certainly could not carry her seven miles an hour.

Page 80.

Q. 7. How rapid was the current just above and between the piers?

A. I should think it was running at the rate of four miles an hour; not very rapid. She did not slow up on approaching the piers, but continued on at the same rate.

Monfort, Captain, p. 59.

Q. 69. How fast could she go with the current as the water was that day?

A. Ten miles an hour with those three barges. She could tow them down stream easily at that stage of the river.

Q. 70. Without crowding?

A. Yes, sir.

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Q. 5. Did you hold up any before you went in between the piers, or did you go at your usual speed?

A. We had poor fuel, and were going at a moderate speed. We did not hold up any.

Grant, pilot, p. 73.

Q. 65. Did you hold up at all in coming through the piers?

A. We did not.

Looney, pilot, p. 80.

Q. 8. Did you slacken your speed on approaching the railroad bridge?

A. We did not, sir.

Q. 11. Was the boat making anything near her usual speed before the time of the collision?

A. She was making her ordinary speed.

Q. 12. How much more speed could have been got out of her by effort?

A. I think not any at the time we were entering the piers.

Q. 6. The squall struck the fleet just as it entered the piers?

A. When the wind struck the boat we were too close to back out; we were within a length or less.

Eugard, running captain, p. 43.

Q. 45. How far above the piers were you when the wind struck the vessel, just before the collision?

A. We were directly opposite them.

Monfort, 56.

Q. 9. Where abouts were you when the wind struck you just above the piers, or just entering them; and if above, how far above?

A. We were just entering the piers when the wind struck us.

Q. 10. Weren't you above the piers?

A. I don't think we were.

Pensinger, mate, p. 63.

Q. 8. What was done by you in the pilot house to counteract the effect of the wind?

A. We gave her the wheel to the starboard to hold her away from the pier. I think nothing more could have been done, as the bow of the barges were then abreast of the upper end of the pier. * * * * *

Grant, pilot, p. 68; but see 71.

Q. Had the bows of the barges lapped the pier at all when the wind struck the boat, do you think?

A. I think the bows of the barges were just about even with the upper end of the pier.

Same witness, p. 73.

Q. 16. How far above the railroad pier was the boat when you was first struck by this flaw of wind?

A. I think it was about the time we were entering, and not any above the piers.

Looney, pilot at wheel, p. 81.

A. 2. A sudden gust * * that struck the boat just as we entered the piers.

Same witness, p. 97.